

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF) CR-05-00215-EJD
AMERICA,)
) DECEMBER 8, 2011
PLAINTIFF,)
) VOLUME 3
V.)
) PAGES 1 - 218
ERIC AARON LIGHTER,)
)
DEFENDANT.)
-----)

THE PROCEEDINGS WERE HELD BEFORE
THE HONORABLE UNITED STATES DISTRICT
JUDGE EDWARD J. DAVILA

A P P E A R A N C E S:

FOR THE PLAINTIFF: U.S. DEPARTMENT OF JUSTICE
BY: CHARLES A. O'REILLY
KATHERINE WONG
P.O.BOX 972
WASHINGTON, D.C. 20044

FOR THE DEFENDANT: CAREY & CAREY
BY: JERRY Y. FONG
706 COWPER STREET
PALO ALTO, CALIFORNIA 94301

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

A P P E A R A N C E S: (CONT'D)

ALSO PRESENT:

INTERNAL REVENUE SERVICE
BY: CHARLES TONNA
450 GOLDEN GATE AVENUE
6TH FLOOR
SAN FRANCISCO, CALIFORNIA
94102

DEPARTMENT OF THE TREASURY
BY: WILLIAM LEE
KENNETH BONANO
450 GOLDEN GATE AVENUE
7TH FLOOR, SUITE 7-2506
SAN FRANCISCO, CALIFORNIA
94102

INDEX OF PROCEEDINGS

FOR THE GOVERNMENT:

SAMUEL FUNG

DIRECT EXAM BY MS. WONG
(RESUMED)

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SAN JOSE, CALIFORNIA

DECEMBER 8, 2011

P R O C E E D I N G S

(WHEREUPON, THE FOLLOWING PROCEEDINGS WERE
HELD IN THE PRESENCE OF THE JURY:)

THE COURT: WE'RE BACK ON THE RECORD IN
THE MATTER OF UNITED STATES VERSUS LIGHTER. ALL
JURORS ARE PRESENT, COUNSEL IS PRESENT, AND THE
DEFENDANT IS PRESENT.

AND MR. FUNG, IF HE CAN BE CALLED BACK
IN.

MR. FUNG, GOOD MORNING. IF YOU CAN
PLEASE RESUME THE WITNESS STAND. AND I'LL REMIND
YOU, SIR, YOU'RE STILL UNDER OATH. PLEASE HAVE A
SEAT.

SAMUEL S. FUNG,
BEING RECALLED AS A WITNESS ON BEHALF OF THE
GOVERNMENT, HAVING BEEN PREVIOUSLY SWORN, WAS FURTHER
EXAMINED AND TESTIFIED AS FOLLOWS:

THE COURT: MS. WONG.

DIRECT EXAMINATION (RESUMED)

BY MS. WONG:

Q GOOD MORNING.

A GOOD MORNING.

Q NOW, MR. FUNG, I NOTICED WE ENDED YESTERDAY

09:12:55 1 TALKING ABOUT A PHONE CALL YOU MADE TO THE
09:12:57 2 DEFENDANT, BUT BEFORE WE GO INTO THAT PHONE CALL
09:13:00 3 AND WHAT HAPPENED AFTERWARDS, I JUST WANTED TO STEP
09:13:02 4 BACK FOR A MOMENT TO THE LAWSUIT THAT YOU FILED
09:13:04 5 AGAINST AGENT BROWN.

09:13:06 6 A OKAY.

09:13:07 7 Q AND DO YOU REMEMBER THE EXACT DATE THAT YOU
09:13:11 8 FILED THAT PARTICULAR SET OF PAPERS THAT TURNED OUT
09:13:17 9 TO BE A LAWSUIT?

09:13:17 10 A NO, I DO NOT.

09:13:18 11 Q WOULD SEEING THE DOCKET FOR THAT CASE REFRESH
09:13:21 12 YOUR RECOLLECTION AS TO THE DATE?

09:13:22 13 A IT SHOULD BE, YES.

09:13:25 14 MS. WONG: AT THIS TIME THE GOVERNMENT IS
09:13:26 15 SHOWING WHAT HAS ALREADY BEEN SHOWN TO DEFENSE
09:13:29 16 COUNSEL AS THE CIVIL DOCKET FOR CASE NUMBER
09:13:37 17 3:01=CV-04947, FUNG V. BROWN.

09:13:42 18 THE COURT: THANK YOU.

09:13:43 19 BY MS. WONG:

09:13:44 20 Q I'D LIKE YOU TO TAKE A LOOK AT THAT DOCUMENT,
09:13:46 21 MR. FUNG, AND SEE IF THAT REFRESHES YOUR
09:13:49 22 RECOLLECTION AS TO THE DATE WHEN YOU FILED YOUR
09:13:53 23 LAWSUIT AGAINST MR. BROWN?

09:13:54 24 A YES.

09:13:56 25 Q WHAT WAS THE DATE THAT YOU FILED YOUR LAWSUIT

09:14:06 1 AGAINST MR. BROWN OR AGENT BROWN?

09:14:08 2 A DECEMBER 18TH, 2001.

09:14:10 3 Q AND THEN AFTER THAT YOU SAID THAT YOU HAD TO
09:14:14 4 GO TO COURT; IS THAT RIGHT?

09:14:15 5 A THAT'S CORRECT.

09:14:16 6 Q AND DO YOU RECALL THE EXACT DATE THAT YOU WENT
09:14:20 7 TO COURT AND YOU LOST?

09:14:22 8 A NO.

09:14:23 9 Q WOULD SEEING THE DOCKET AGAIN REFRESH YOUR
09:14:26 10 RECOLLECTION AS TO THAT?

09:14:27 11 A YES.

09:14:27 12 Q THERE'S ALSO A SECOND PAGE TO THE DOCUMENT.

09:15:36 13 A YES.

09:15:36 14 Q AND IS YOUR RECOLLECTION REFRESHED?

09:15:38 15 A YES.

09:15:38 16 Q AND WHAT IS THE DATE WHEN YOU WENT TO COURT
09:15:41 17 AND THE JUDGE ENDED THE CASE AND YOU LOST?

09:15:44 18 A APRIL 16TH, 2002.

09:15:47 19 Q NOW, MR. FUNG, ONE THING THAT, YOU KNOW, THE
09:15:51 20 JURY AND WE HAVE NOTICED THAT YOU'RE DOING IS
09:15:53 21 YOU'RE HAVING TO LOOK VERY CLOSELY AT THE DOCUMENTS
09:15:56 22 AND SOMETIMES TAKE OFF YOUR GLASSES.

09:15:58 23 HAS SOMETHING HAPPENED RECENTLY THAT
09:16:01 24 REQUIRES YOU TO LOOK SO CLOSELY AT THE DOCUMENTS?

09:16:04 25 A YES.

09:16:04 1 Q AND CAN YOU TELL THE JURY WHAT THAT WAS?

09:16:07 2 A AT THE END OF SEPTEMBER MY RIGHT EYE WENT
09:16:10 3 BLIND. I HAVE SOMETHING CALLED RETINA DETACHMENT,
09:16:14 4 AND I WENT TO SURGERY AND IT'S IN THE PROCESS OF
09:16:18 5 RECOVERING STILL.

09:16:18 6 Q NOW, CAN YOU SEE OUT OF THAT EYE?

09:16:20 7 A YES.

09:16:21 8 Q WHAT CAN YOU -- CAN YOU SEE AS WELL AS YOU DID
09:16:25 9 BEFORE YOUR RETINA DETACHED?

09:16:27 10 A NO, NOT AS GOOD.

09:16:29 11 Q AND WHAT SPECIFICALLY IS STILL THE ISSUE?

09:16:31 12 A IT STILL TAKES TIME TO RECOVER. ALSO I NEED
09:16:39 13 TO CHANGE MY RIGHT EYE LENS. THE EYE DOCTOR TOLD
09:16:42 14 ME I NEED TO WAIT. I THINK THE EYE DOCTOR FEELS
09:16:45 15 THAT IT'S STILL IN THE PROCESS OF RECOVERING.

09:16:48 16 Q SO IS IT FAIR TO SAY THAT YOU CAN'T SEE AS
09:16:51 17 WELL AS YOU COULD BEFORE YOU HAD A DETACHED RETINA?

09:16:54 18 A YES.

09:16:54 19 Q ALL RIGHT. MR. FUNG, I'D LIKE TO NOW TAKE YOU
09:16:58 20 BACK TO THE PHONE CALL THAT YOU HAD WITH THE
09:17:00 21 DEFENDANT.

09:17:01 22 NOW, YOU SAID THAT YESTERDAY THAT YOU HAD
09:17:05 23 GOTTEN THE DEFENDANT'S NAME FROM A PERSON NAMED
09:17:08 24 MIKE IOANE?

09:17:09 25 A YES.

09:17:09 1 Q AND NOW, WHEN YOU CALLED UP THE -- WHEN YOU
09:17:15 2 CALLED UP THE DEFENDANT, HOW SOON AFTER YOU GOT THE
09:17:17 3 NAME FROM MR. IOANE DID YOU MAKE THAT PHONE CALL?
09:17:21 4 WAS IT ONE DAY? A MONTH? A YEAR?

09:17:24 5 A I THINK I CALLED QUICKLY.

09:17:27 6 Q AND WHEN YOU SAY "QUICKLY," WAS IT A MONTH
09:17:31 7 LATER? A FEW DAYS LATER? YOU DON'T HAVE TO BE
09:17:34 8 EXACT.

09:17:34 9 A I DON'T RECALL EXACTLY, BUT I KNOW THAT I DID
09:17:38 10 MAKE CONTACT WITH THE DEFENDANT.

09:17:39 11 Q AND HOW WERE YOU FEELING AT THE TIME WHEN YOU
09:17:42 12 MADE CONTACT WITH THE DEFENDANT?

09:17:44 13 A I FEEL THAT IF HE WANTED TO HELP ME, THAT I
09:17:55 14 SHOULD LOOK INTO TALKING TO THE DEFENDANTS.

09:17:57 15 Q AND HOW WERE YOU FEELING ABOUT THE I.R.S. AT
09:17:59 16 THAT TIME?

09:18:00 17 A I FEEL THAT THEY WANT TO GO AFTER ME.

09:18:06 18 Q AND WERE YOU FEELING HAPPY? SCARED?

09:18:09 19 A UM, I FEEL THAT I NEED TO DO SOMETHING.

09:18:17 20 Q NOW, WHEN YOU -- WHERE DID YOU -- IF YOU KNOW,
09:18:21 21 DID YOU KNOW WHERE THE DEFENDANT LIVED AT THE TIME
09:18:24 22 THAT YOU CALLED HIM?

09:18:25 23 A YES.

09:18:25 24 Q AND WHERE DID HE LIVE?

09:18:27 25 A IN HAWAII.

09:18:30 1 Q NOW, WHEN YOU CALLED THE DEFENDANT, WHAT WERE
09:18:33 2 YOU HOPING THAT THE DEFENDANT COULD DO FOR YOU?

09:18:35 3 A ASSIST ME IN ALL OF THE COMMOTIONS.

09:18:41 4 Q AND WHEN YOU SAY, "COMMOTIONS," WHAT
09:18:43 5 COMMOTIONS ARE YOU SPECIFICALLY REFERRING TO?

09:18:45 6 A GOING TO COURT AND HAVING A LAWSUIT AND AGENT
09:18:58 7 DENNIS BROWN AND OTHER THINGS.

09:18:59 8 Q SO WHEN YOU SAY "OTHER THINGS," WERE THOSE
09:19:02 9 THINGS RELATED TO YOUR TAXES OR SOMETHING ELSE?

09:19:04 10 A RELATED TO MY TAXES.

09:19:07 11 Q AND HOW ABOUT N.T.S., WERE YOU CALLING THE
09:19:10 12 DEFENDANT ABOUT N.T.S. OR WAS IT JUST OF YOUR
09:19:14 13 TAXES?

09:19:14 14 A PROBABLY N.T.S. BECAUSE OF MY ASSOCIATION WITH
09:19:17 15 THEM.

09:19:17 16 Q AND WHAT, IF ANYTHING, WERE YOU WORRIED ABOUT
09:19:20 17 BECAUSE OF YOUR ASSOCIATION WITH N.T.S.?

09:19:22 18 A THAT I WAS GOING TO OREGON TO HELP ROY FRITTS
09:19:34 19 AND THINGS LIKE THAT.

09:19:35 20 Q BUT WHAT WERE YOU WORRIED, IF ANYTHING, THAT
09:19:39 21 MIGHT HAPPEN AS A RESULT OF REPRESENTING ROY
09:19:42 22 FRITTS?

09:19:43 23 A THAT I WOULD RESOLVE THE I.R.S. ISSUES.

09:19:48 24 Q NOW, WHEN YOU CALLED THE DEFENDANT, DID YOU
09:19:50 25 DISCUSS TAXES WITH HIM?

09:19:54 1
09:20:01 2
09:20:01 3
09:20:07 4
09:20:09 5
09:20:11 6
09:20:16 7
09:20:20 8
09:20:23 9
09:20:23 10
09:20:24 11
09:20:28 12
09:20:32 13
09:20:34 14
09:20:40 15
09:20:42 16
09:20:50 17
09:20:52 18
09:20:57 19
09:20:57 20
09:21:02 21
09:21:08 22
09:21:11 23
09:21:15 24
09:21:16 25

A I EXPLAINED TO HIM ABOUT THE SUBPOENA AND THINGS LIKE THAT.

Q AND WHEN YOU SAY "THINGS LIKE THAT," COULD YOU TELL THE JURY WHAT YOU TALKED ABOUT WITH REGARDS TO YOUR TAXES OR TAXES GENERALLY?

A I PROBABLY TALK ABOUT THE TAX RETURN AS BEING TARGETED FOR AUDITS AND I NEED TO DEAL WITH IT.

Q AND WHEN YOU SAY "PROBABLY," DID YOU ACTUALLY TALK ABOUT THAT?

A I DID.

Q YOU DID. AND IN ADDITION TO TALKING ABOUT THE TRUST RETURNS, DID YOU TALK ANYTHING ABOUT OTHER PEOPLE INVOLVED WITH N.T.S.?

A YES.

Q AND WHAT DID YOU TALK ABOUT?

A ROY FRITTS AND RICK PRESCOTT.

Q AND NOW, WHEN YOU CALLED THE DEFENDANT, WHAT, IF ANYTHING, DID HE TELL YOU ABOUT NATIONAL TRUST SERVICES?

A HE TOLD ME THAT HE KNEW ABOUT NATIONAL TRUST SERVICES OF HAWAII. HAWAII, THERE'S A BRANCH OF NATIONAL TRUST SERVICES AND I DON'T KNOW EXACTLY THE NAME BUT PROBABLY NATIONAL TRUST SERVICES OF HAWAII.

Q AND WHAT DID THE DEFENDANT SAY ABOUT THAT

09:21:17 1
09:21:19 2
09:21:22 3
09:21:28 4
09:21:31 5
09:21:38 6
09:21:38 7
09:21:39 8
09:21:41 9
09:21:44 10
09:21:45 11
09:21:45 12
09:21:47 13
09:21:52 14
09:21:54 15
09:21:57 16
09:21:59 17
09:21:59 18
09:22:01 19
09:22:08 20
09:22:12 21
09:22:15 22
09:22:18 23
09:22:20 24
09:22:21 25

BRANCH OF NATIONAL TRUST SERVICES?

A THAT THE GOVERNMENT DIDN'T LIKE IT AND WAS,
YOU KNOW, TRYING TO, YOU KNOW, DEAL WITH IT.

Q AND DID HE MENTION ANY PARTICULAR PEOPLE
INVOLVED WITH NATIONAL TRUST SERVICES IN HAWAII?

A YES.

Q AND WHO DID HE MENTION?

A OLGA ORTIZ.

Q AND WHEN THE DEFENDANT MENTIONED THAT NAME,
DID YOU RECOGNIZE HIM?

A YES.

Q AND WHO WAS OLGA ORTIZ?

A OLGA ORTIZ IS THE IN-CHARGE PERSON OF NATIONAL
TRUST OF HAWAII.

Q AND WAS MS. ORTIZ INVOLVED IN PREPARING TAX
RETURNS FOR MEMBERS IN HAWAII?

A YES.

Q AND WHAT DID SHE DO FOR THEM?

A MY UNDERSTANDING IS THAT SHE ALSO HAS A TAX
PREPARATION BUSINESS THAT SHE HAD BEEN DOING A LOT
OF RETURNS FOR THE MEMBERS.

Q NOW, IN ADDITION TO TALKING ABOUT NATIONAL
TRUST SERVICES, DID YOU AND THE DEFENDANT DISCUSS
GRAND JURIES?

A YES.

09:22:21 1 Q NOW, HAD -- DID YOU KNOW WHAT A GRAND JURY WAS
09:22:27 2 BEFORE YOU TALKED TO THE DEFENDANT?

09:22:28 3 A I HEARD ABOUT IT, BUT I DID NOT EXACTLY KNOW
09:22:36 4 WHAT IT IS, I MEAN, THE DETAILS.

09:22:38 5 Q AND WHAT DID THE DEFENDANT TELL YOU, IF
09:22:40 6 ANYTHING, ABOUT GRAND JURIES?

09:22:42 7 A THAT I HAD DONE SOME WORK RELATED TO THE GRAND
09:22:50 8 JURY OR SOMETHING.

09:22:50 9 Q DID THE DEFENDANT TELL YOU ANYTHING ABOUT HIS
09:22:55 10 OTHER WORK THAT HE HAD DONE OR OF HIS OTHER
09:22:58 11 EXPERIENCE THAT MIGHT MAKE HIM QUALIFIED TO HELP
09:23:01 12 YOU?

09:23:01 13 A YES.

09:23:01 14 Q AND WHAT DID THE DEFENDANT TELL YOU?

09:23:04 15 A THAT HE'S BEEN -- HIS NAME HAD BEEN WRITTEN UP
09:23:07 16 INTO SOME TYPE OF FEDERAL REGISTRY, THAT HE --
09:23:13 17 THERE'S AN ARTICLE ABOUT HIM SAVING A PERSON TO DO
09:23:21 18 WITH TAXES.

09:23:21 19 Q NOW, DURING THIS CONVERSATION, DID YOU CALL
09:23:23 20 THE DEFENDANT BECAUSE YOU WANTED TO DO A REAL
09:23:25 21 ESTATE DEAL OR ANY REAL ESTATE DEALS IN HAWAII?

09:23:29 22 A NO, NOT AT ALL.

09:23:30 23 Q DID YOU TALK ABOUT DOING REAL ESTATE DEALS IN
09:23:32 24 THAT PHONE CALL?

09:23:33 25 A NO.

09:23:33 1 Q NOW, AFTER THE DEFENDANT TOLD YOU THESE THINGS
09:23:36 2 ABOUT GRAND JURIES AND NATIONAL TRUST SERVICES IN
09:23:38 3 HAWAII, HOW DID YOU FEEL?

09:23:41 4 A I FEEL THAT HE HAS KNOWLEDGE OF ALL OF THIS
09:23:49 5 STUFF.

09:23:50 6 Q AND DID YOU MAKE A DECISION ABOUT WHETHER OR
09:23:52 7 NOT TO HIRE THE DEFENDANT AFTER TALKING TO HIM?

09:23:54 8 A YES.

09:23:54 9 Q AND WHAT DID YOU DECIDE TO DO?

09:23:56 10 A I DECIDED TO HIRE HIM TO HELP ME.

09:23:59 11 Q AND WHEN DID YOU MAKE THAT DECISION? WAS IT
09:24:01 12 DURING THAT PHONE CALL?

09:24:02 13 A EITHER DURING THE PHONE CALL OR SHORTLY AFTER.

09:24:11 14 Q AND WHEN YOU SAY "SHORTLY AFTER," WAS IT
09:24:13 15 WITHIN A WEEK OR TWO? OR THE NEXT MONTH? OR YEAR?

09:24:18 16 A YES.

09:24:18 17 Q AND WHICH ONE?

09:24:19 18 A I DON'T RECALL, BUT VERY SHORTLY.

09:24:25 19 Q AND NOW, WHEN YOU HAD TO HIRE THE DEFENDANT,
09:24:28 20 DID IT COST ANY MONEY TO HIRE THE DEFENDANT?

09:24:30 21 A YES.

09:24:30 22 Q AND HOW MUCH?

09:24:39 23 A UH, \$10,000, IF I REMEMBER. ABOUT \$10,000.

09:24:42 24 Q AND NOW, MR. FUNG, DID YOU HAVE THAT TYPE OF
09:24:44 25 MONEY, \$10,000, TO PAY THE DEFENDANT?

09:24:46 1
09:24:47 2
09:24:49 3
09:24:51 4
09:24:53 5
09:24:53 6
09:24:57 7
09:24:57 8
09:25:02 9
09:25:03 10
09:25:05 11
09:25:08 12
09:25:08 13
09:25:15 14
09:25:20 15
09:25:22 16
09:25:24 17
09:25:29 18
09:25:30 19
09:25:33 20
09:25:36 21
09:25:39 22
09:25:48 23
09:25:50 24
09:25:53 25

A NO.

Q AND SO HOW DID YOU GET THE MONEY?

A I BORROWED FROM A FRIEND.

Q AND DID YOU PAY THAT FRIEND BACK EVENTUALLY?

A YES.

Q AND NOW, DO YOU RECALL HOW YOU SENT THE MONEY
TO THE DEFENDANT?

A I WIRED THE MONEY TO THE DEFENDANT'S BANK
ACCOUNT.

Q AND BEFORE YOU WIRED THAT MONEY, HOW DID YOU
GET THE INFORMATION TO KNOW WHAT BANK ACCOUNT TO
SEND IT TO?

A THE DEFENDANT PROVIDED ME A SLIP, LIKE A BANK
ACCOUNT DEPOSIT SLIP OR SOMETHING WITH THE ACCOUNT
WIRING WITH INFORMATION ON IT.

Q AND HOW DID THE DEFENDANT PROVIDE THAT TO YOU?

A I DON'T EXACTLY RECALL. EITHER HE E-MAILED TO
ME OR FAXED IT TO ME.

Q I'M GOING TO SHOW YOU NOW WHAT HAS BEEN MARKED
FOR IDENTIFICATION PURPOSES AS GOVERNMENT'S
EXHIBIT 56, 57, AND 58 AND ASK IF YOU RECOGNIZE --
LET'S START WITH 56.

THE COURT: MR. FONG, YOU HAVE SEEN THIS?

MR. FONG: YES, I DO -- YES, I HAVE, YOUR
HONOR.

09:26:09 1 BY MS. WONG:

09:26:09 2 Q NOW, LET'S START WITH THE FIRST EXHIBIT I GAVE
09:26:12 3 YOU, GOVERNMENT'S EXHIBIT 56. DO YOU RECOGNIZE
09:26:14 4 THAT DOCUMENT, MR. FUNG?

09:26:15 5 A YES.

09:26:16 6 Q AND WHAT IS IT?

09:26:17 7 A THAT'S FOR -- THE DEFENDANT PROVIDED ME S
09:26:22 8 DEPOSIT SLIP WITH THE BANK ACCOUNT TITLED HONOLULU
09:26:30 9 INN.

09:26:31 10 Q AND IS THIS A FAIR AND ACCURATE COPY OF WHAT
09:26:33 11 THE DEFENDANT PROVIDED TO YOU?

09:26:34 12 A YES.

09:26:37 13 MS. WONG: AT THIS TIME THE GOVERNMENT
09:26:38 14 OFFERS GOVERNMENT'S EXHIBIT 56 INTO EVIDENCE.

09:26:41 15 MR. FONG: NO OBJECTION.

09:26:42 16 THE COURT: IT'S RECEIVED INTO EVIDENCE.

09:26:44 17 (WHEREUPON, GOVERNMENT'S EXHIBIT NUMBER 56,
09:26:44 18 HAVING BEEN PREVIOUSLY MARKED FOR
09:26:44 19 IDENTIFICATION, WAS ADMITTED INTO
09:26:44 20 EVIDENCE.)

09:26:44 21 MS. WONG: MAY WE PLEASE PUBLISH IT TO
09:26:46 22 THE JURY?

09:26:47 23 THE COURT: YES. ALL RIGHT.

09:26:47 24 BY MS. WONG:

09:27:40 25 Q IF WE CAN ZOOM IN FIRST ON THE TOP PART THAT

09:27:43 1

SHOWS THE -- WHAT APPEARS TO BE A DATE.

09:27:47 2

NOW, MR. FUNG, IF YOU CAN TAKE A LOOK AT

09:27:49 3

THIS SCREEN, CAN YOU SEE THE EXHIBIT?

09:27:51 4

A YES.

09:27:51 5

Q AND THAT DATE UP THERE, WHAT DATE IS SHOWN AT

09:27:57 6

THE TOP?

09:27:57 7

A IT'S APRIL 14, 2002.

09:28:00 8

Q IS THAT THE DATE THAT YOU RECEIVED THIS COPY

09:28:03 9

OF THE SLIP FROM THE DEFENDANT?

09:28:05 10

A YES.

09:28:05 11

Q AND HONOLULU INN, WHAT IS HONOLULU INN?

09:28:17 12

A IT'S -- FROM THE NAME I KNOW IT'S SOME TYPE OF

09:28:28 13

LODGING OR HOTEL OR HOSPITALITY.

09:28:32 14

Q DID IT BELONG TO THE DEFENDANT?

09:28:33 15

A I'M ASSUMING IT MUST BE.

09:28:34 16

Q AND DID THE DEFENDANT SAY THAT THIS IS THE

09:28:36 17

ACCOUNT THAT YOU SHOULD SEND THE MONEY TO?

09:28:38 18

A YES.

09:28:39 19

Q NOW, AFTER YOU RECEIVED THIS FAX FROM THE

09:28:41 20

DEFENDANT, DID YOU THEN GO -- I'D LIKE YOU TO TAKE

09:28:47 21

A LOOK NOW AT GOVERNMENT'S EXHIBIT 57.

09:28:49 22

DO YOU RECOGNIZE THAT DOCUMENT?

09:28:50 23

A YES.

09:28:51 24

Q WHAT IS IT?

09:28:53 25

A IT'S WIRE TRANSFER INSTRUCTIONS FOR THE BANK

09:28:59 1 TO WIRE MONEY TO DEFENDANT'S BANK ACCOUNT.

09:29:03 2 Q AND WAS THAT ONE OF THE WIRES THAT YOU SENT TO
09:29:06 3 THE DEFENDANT?

09:29:07 4 A YES.

09:29:07 5 Q AND WERE YOU PRESENT WHEN THAT WIRE TRANSFER
09:29:11 6 FORM WAS FILLED OUT?

09:29:12 7 A YES.

09:29:13 8 Q AND IS YOUR SIGNATURE ON THAT FORM?

09:29:16 9 A YES.

09:29:21 10 Q AND IS THIS FORM A FAIR AND ACCURATE COPY OF
09:29:23 11 THE FORM YOU FILLED OUT WHEN YOU WIRED THE MONEY TO
09:29:25 12 THE DEFENDANT?

09:29:26 13 A YES.

09:29:27 14 MS. WONG: AT THIS TIME THE GOVERNMENT
09:29:29 15 OFFERS EXHIBIT NUMBER 57 INTO EVIDENCE.

09:29:31 16 MR. FONG: NO OBJECTION.

09:29:32 17 THE COURT: IT'S RECEIVED.

09:29:32 18 (WHEREUPON, GOVERNMENT'S EXHIBIT NUMBER 75,
09:29:32 19 HAVING BEEN PREVIOUSLY MARKED FOR
09:29:32 20 IDENTIFICATION, WAS ADMITTED INTO
09:29:41 21 EVIDENCE.)

09:29:41 22 MR. FONG: NO OBJECTION AS TO 56 OR 57,
09:29:43 23 YOUR HONOR.

09:29:43 24 THE COURT: THANK YOU.

09:29:52 25 BY MS. WONG:

09:29:53 1 Q NOW, MR. FUNG, I'D LIKE YOU TO TAKE A LOOK AT
09:29:55 2 GOVERNMENT'S EXHIBIT 57 WHICH IS ON YOUR SCREEN
09:29:57 3 NOW.

09:29:57 4 AGAIN, WHO DID YOU SEND -- IN THE CENTER
09:30:00 5 OF THE PAGE, COULD YOU FOCUS ON THAT AND TELL US
09:30:02 6 WHO YOU SENT THE WIRE TRANSFER TO?

09:30:06 7 A HONOLULU INN.

09:30:08 8 Q AND ON WHAT DATE DID YOU SEND THAT? NOT THE
09:30:11 9 ONE -- THE ONE THAT IS ON THE SCREEN FIRST,
09:30:14 10 MR. FUNG. WHAT DATE DID YOU SEND IT?

09:30:16 11 A APRIL 16TH, 2002.

09:30:21 12 Q NOW, YOU SAY THAT'S YOUR SIGNATURE DOWN
09:30:23 13 UNDERNEATH CUSTOMER SIGNATURE?

09:30:25 14 A YES.

09:30:25 15 Q AND NOW, THERE APPEARS TO BE SOMETHING THAT IS
09:30:28 16 ON TOP OF THIS, THIS WIRE TRANSFER REQUEST.

09:30:30 17 WHAT IS THAT NOTE THAT BEGINS WITH "ERIC"

09:30:33 18 A THE 5,000 IS ONLY A PORTION OF THE 10,000.

09:30:43 19 Q AND SO WHAT DOES THE NOTE SAY ON TOP THERE?

09:30:46 20 A I PUT A YELLOW POST-IT NOTEPAD ON IT AND
09:30:50 21 LETTING HIM KNOW THAT THE REST OF THE BALANCE WILL
09:30:53 22 BE COMING.

09:30:59 23 Q AND DID YOU EVENTUALLY SEND THE REST OF THAT
09:31:02 24 BALANCE?

09:31:02 25 A YES.

09:31:02 1 Q AND NOW, LET'S GO TO THE SECOND PAGE FOR JUST
09:31:05 2 A MOMENT AND FOCUS ON WHAT IS AT THE TOP OF THAT
09:31:07 3 PAGE.

09:31:18 4 DO YOU SEE WHAT IS WRITTEN UNDER
09:31:21 5 ORIGINATOR, THE NAME THERE?

09:31:22 6 A YES.

09:31:22 7 Q AND COULD YOU JUST READ THE NAME TO THE JURY?

09:31:25 8 A CORTLAND PROPERTIES AND TRUST COMPANY.

09:31:27 9 Q AND DO YOU RECOGNIZE THAT NAME?

09:31:28 10 A YES.

09:31:29 11 Q AND WHAT IS CORTLAND PROPERTIES AND TRUST
09:31:31 12 COMPANY?

09:31:31 13 A IT'S MY REAL ESTATE COMPANY.

09:31:39 14 Q AND IT SAYS TRUST IN THERE. DID THAT HAVE ANY
09:31:41 15 RELATIONSHIP TO THE NATIONAL TRUST SERVICES OR THE
09:31:45 16 PACKAGES THAT THEY TOLD?

09:31:46 17 A YES.

09:31:46 18 Q AND WHAT WAS THE RELATIONSHIP?

09:31:48 19 A I HAVE THE COMPANY SET UP AS A BUSINESS TRUST.

09:31:53 20 Q AND WAS THAT ONE OF THE TRUSTS THAT YOU BOUGHT
09:31:55 21 PREVIOUSLY FROM NATIONAL TRUST SERVICES?

09:31:58 22 A YES.

09:31:58 23 Q I'D NOW LIKE YOU TO TAKE A LOOK AT
09:32:01 24 GOVERNMENT'S EXHIBIT 58, WHICH IS IN YOUR HAND.

09:32:03 25 A SURE.

Q AND THAT'S BEEN MARKED FOR IDENTIFICATION.

AND DO YOU RECOGNIZE GOVERNMENT'S
EXHIBIT 58?

A YES.

Q WHAT IS IT?

A IT'S A DOMESTIC WIRE TRANSFER OUTGOING FORM
WIRE INSTRUCTIONS.

Q AND WAS THIS WHAT YOU SENT TO THE DEFENDANT?

A YES.

Q AND WERE YOU PRESENT WHEN THIS FORM WAS FILLED
OUT?

A YES.

Q AND IS IT A FAIR AND ACCURATE COPY OF THE FORM
THAT WAS FILLED OUT?

A YES.

MS. WONG: AT THIS TIME THE GOVERNMENT
OFFERS GOVERNMENT'S EXHIBIT 58 INTO EVIDENCE.

MR. FONG: NO OBJECTION.

THE COURT: IT'S RECEIVED WITHOUT
OBJECTION.

(WHEREUPON, GOVERNMENT'S EXHIBIT NUMBER 58,
HAVING BEEN PREVIOUSLY MARKED FOR
IDENTIFICATION, WAS ADMITTED INTO
EVIDENCE.)

BY MS. WONG:

Q NOW, MR. FUNG, I'D LIKE YOU TO TAKE A LOOK AT GOVERNMENT'S EXHIBIT 58, WHICH IS UP THERE. AND IF WE CAN FOCUS ON THE TOP PART OF IT SPECIFICALLY WHERE THE DATE APPEARS.

COULD YOU READ THE DATE THAT THIS FORM WAS FILLED OUT TO THE JURY?

A APRIL 19TH, 2002.

Q AND IS THAT THE DATE APRIL 19TH THAT YOU SENT THE REST OF THE MONEY TO THE DEFENDANT?

A YES.

Q AND HOW MUCH WAS THIS WIRE TO THE DEFENDANT?

A IT WAS 5500.

Q AND NOW, YOU SAID -- WHAT DID YOU SAY YOU HAD TO PAY THE DEFENDANT BEFORE FOR HIM TO HELP YOU?

A TEN THOUSAND DOLLARS, BUT I ALSO HAD TO BUY HIS TICKETS.

Q SO WHAT IS THAT -- SO IT'S 500 FOR THE TICKET?

A YES.

Q AND WHAT TICKET ARE YOU REFERRING TO?

A THE AIRFARE FOR THE DEFENDANT FLYING FROM HAWAII TO THE MAINLAND.

Q AND ONCE AGAIN, IF YOU CAN JUST GO DOWN, WHO IS THE ENTITY THAT YOU JUST SENT THE MONEY TO?

A HONOLULU INN.

Q AND THE CUSTOMER INFORMATION, IT SAYS HERE

09:33:44 1

CORTLAND TRUST. WHAT IS CORTLAND TRUST?

09:33:46 2

A IT'S THE NAME FROM THE SAME ENTITY EARLIER.

09:33:55 3

Q AND WHEN YOU SAY "THE SAME NAME," ARE YOU

09:33:59 4

REFERRING TO YOUR BUSINESS TRUST?

09:34:00 5

A YES.

09:34:00 6

Q AND IS THAT YOUR SIGNATURE THAT APPEARS HERE?

09:34:02 7

A YES.

09:34:02 8

Q NOW, AFTER YOU SENT THESE WIRES, DID YOU BET

09:34:06 9

BACK INTO CONTACT WITH THE DEFENDANT?

09:34:09 10

A YES.

09:34:10 11

Q AND HOW DID YOU GET IN CONTACT WITH HIM?

09:34:12 12

A I INFORMED HIM THAT THE MONEY HAS BEEN WIRE

09:34:20 13

TRANSFERRED TO HIS BANK ACCOUNT.

09:34:21 14

Q AND WHAT, IF ANYTHING, DID THE DEFENDANT SAY

09:34:24 15

WHEN YOU TOLD HIM THAT?

09:34:25 16

A THAT HE WOULD COME OVER TO THE MAINLAND, TO

09:34:29 17

THE STATES.

09:34:29 18

Q AND ABOUT -- AND DID THE DEFENDANT, IN FACT,

09:34:33 19

COME OVER TO THE STATES?

09:34:34 20

A YES.

09:34:35 21

Q AND ABOUT HOW LONG AFTER YOU SENT THOSE WIRES

09:34:39 22

DID THE DEFENDANT COME?

09:34:40 23

A VERY QUICKLY. YOU KNOW, I THINK A WEEK OR

09:34:45 24

TWO.

09:34:45 25

Q AND IF YOU KNOW, WHERE DID THE DEFENDANT FLY

09:34:50 1

INTO?

09:34:50 2

A SAN FRANCISCO.

09:34:51 3

Q AND WERE YOU PRESENT WHEN THE DEFENDANT

09:34:55 4

ARRIVED IN SAN FRANCISCO?

09:34:56 5

A YES.

09:34:56 6

Q AND HOW DID YOU GET THERE?

09:34:58 7

A I WENT THERE -- I DROVE FROM MEDFORD, OREGON

09:35:02 8

TO THE AIRPORT TO PICK HIM UP.

09:35:04 9

Q AND AFTER YOU PICKED UP THE DEFENDANT AT THE

09:35:06 10

AIRPORT, WHERE DID YOU TWO GO?

09:35:08 11

A WE DROVE ALL OF THE WAY BACK TO MEDFORD,

09:35:15 12

OREGON.

09:35:19 13

Q NOW, WHEN YOU DROVE THE DEFENDANT BACK TO

09:35:21 14

MEDFORD -- IS THAT WHERE YOU WERE LIVING AT THE

09:35:24 15

TIME?

09:35:24 16

A YES.

09:35:24 17

Q AND WHEN YOU DROVE HIM BACK TO MEDFORD,

09:35:28 18

OREGON, WHY IS IT YOUR UNDERSTANDING THAT THE

09:35:30 19

DEFENDANT HAD COME?

09:35:31 20

A TO LOOK AT ALL OF THE DOCUMENTS AND HELP ME TO

09:35:37 21

AMEND THE RETURNS THAT I HAD.

09:35:39 22

Q AND WHEN YOU SAY "RETURNS" WHAT RETURNS ARE

09:35:42 23

YOU REFERRING TO?

09:35:42 24

A MY PERSONAL TAX RETURNS.

09:35:44 25

Q NOW, MR. FUNG, BEFORE WE TALK ABOUT WHAT

09:35:47 1 HAPPENED IN MEDFORD, OREGON, YOU MENTIONED JUST A
09:35:50 2 MOMENT AGO THAT YOU HAD SOME BUSINESS TRUSTS
09:35:53 3 THROUGH N.T.S., RIGHT?

09:35:58 4 A YES.

09:35:58 5 Q AND DID YOU FILE ANY BUSINESS TRUST RETURNS
09:35:59 6 FOR YOUR BUSINESS TRUST WITH THE I.R.S.?

09:36:02 7 A NO.

09:36:14 8 Q WHY DIDN'T YOU FILE ANY BUSINESS TRUST RETURNS
09:36:17 9 FOR YOUR BUSINESS TRUST WITH THE I.R.S.?

09:36:18 10 A I DID NOT AT THAT TIME.

09:36:20 11 Q SO BY THE TIME THE DEFENDANT HAD COME, YOU
09:36:22 12 STILL HADN'T FILED YOUR BUSINESS TRUST RETURNS?

09:36:24 13 A NO.

09:36:25 14 Q BUT YOU HELPED YOUR OTHER CLIENTS FILE THEIR
09:36:34 15 TRUST RETURNS EVERY YEAR?

09:36:35 16 A YES.

09:36:35 17 Q AND SO YOU KNEW YOU WERE SUPPOSED TO FILE YOUR
09:36:38 18 TRUST RETURNS?

09:36:39 19 A YES.

09:36:39 20 Q AND SO NOW YOU DID SAY YOU DID FILE -- DID YOU
09:36:42 21 FILE PERSONAL INCOME TAX RETURNS?

09:36:45 22 A YES.

09:36:45 23 Q AND WHO PREPARED THOSE RETURNS BEFORE THE
09:36:47 24 DEFENDANT ARRIVED TO HELP YOU?

09:36:48 25 A I DID.

Q I'D LIKE TO SHOW -- PUBLISH TO THE JURY WHAT
IS ALREADY IN EVIDENCE AS GOVERNMENT'S EXHIBIT 76.

THE COURT: ALL RIGHT.

BY MS. WONG:

Q NOW, IF WE CAN FOCUS ON THE TOP OF THIS
RETURN.

MR. FUNG, IS THIS ONE OF THE -- DO YOU
RECOGNIZE THIS RETURN?

A YES.

Q AND IS THIS A 1998 RETURN THAT YOU PREPARED
FOR YOU AND YOUR WIFE?

A YES.

Q NOW, IF WE CAN GO DOWN NOW TO THE LOWER PART
OF THE PAGE AND LOOK AND BASICALLY INCLUDE THE
INCOME AND ADJUSTED GROSS INCOME SO HE CAN SEE THE
STAMP.

SO ACCORDING TO THE STAMP, MR. FUNG,
ABOUT WHAT TIME DID THE I.R.S. RECEIVE YOUR 1040
FOR THE 1998 TAX YEAR?

A NOVEMBER 1ST, 1999.

Q AND NOW, IF WE TAKE A LOOK AT THE INCOME FOR A
MOMENT ON YOUR INDIVIDUAL TAX RETURN, DOES THAT
NUMBER 36,787, DOES THAT INCLUDE ANY INCOME THAT
YOU -- WHAT INCOME DOES THAT INCLUDE?

A MY WIFE'S SALARY.

09:37:59 1 Q AND NOW, IN 1988, WERE YOU ALSO STILL
09:38:03 2 PREPARING TRUST RETURNS?

09:38:04 3 A YES.

09:38:05 4 Q AND IS IT FAIR TO SAY THAT THIS NUMBER DOES
09:38:10 5 NOT INCLUDE THAT INCOME?

09:38:11 6 A CORRECT.

09:38:12 7 Q AND YOU KNEW THAT WHEN YOU PREPARED THIS
09:38:13 8 RETURN?

09:38:14 9 A YES.

09:38:15 10 Q AND WAS THIS ONE OF THE RETURNS THAT THE
09:38:19 11 DEFENDANT WAS GOING TO HELP YOU AMEND?

09:38:20 12 A YES.

09:38:21 13 Q I'D LIKE TO PUBLISH AT THIS TIME GOVERNMENT'S
09:38:26 14 EXHIBIT 77 TO THE JURY AND MR. FUNG.

09:38:34 15 FOCUSING ON THE TOP PART. MR. FUNG, IS
09:38:37 16 THIS A 1999 INDIVIDUAL INCOME TAX RETURN THAT YOU
09:38:40 17 PREPARED FOR YOU AND YOUR WIFE?

09:38:42 18 A YES.

09:38:42 19 Q AND IF WE GO DOWN TO THE AREA THAT INCLUDES
09:38:46 20 THE STAMP AND ALSO THE INCOME, ACCORDING TO THE
09:38:53 21 STAMP, WHEN -- ACCORDING TO THE STAMP, WHEN DID THE
09:39:11 22 I.R.S. RECEIVE THIS RETURN FROM YOU?

09:39:13 23 A NOVEMBER 6TH, 2000.

09:39:17 24 Q AND IF WE TAKE A LOOK AT LINE 7 THERE, HOW
09:39:21 25 MUCH INCOME DID YOU REPORT FOR THE 1999 TAX YEAR?

09:39:24 1 A ON LINE 7 IT'S ZERO.

09:39:31 2 Q NOW, AT THAT TIME WERE YOU STILL PREPARING
09:39:34 3 RETURNS FOR NATIONAL TRUST SERVICES MEMBERS?

09:39:37 4 A YES.

09:39:38 5 Q AND IS IT FAIR TO SAY THAT LINE 7, THE ZERO
09:39:42 6 INCOME DOESN'T INCLUDE THE MONEY THAT YOU MADE FROM
09:39:45 7 THAT?

09:39:45 8 A NO.

09:39:48 9 Q BUT YOU --

09:39:53 10 THE COURT: NO, IT'S NOT FAIR TO SAY IT.

09:39:55 11 THE WITNESS: NO, IT'S NOT FAIR TO SAY IF
09:39:59 12 YOU LOOK AT LINE 12.

09:40:00 13 BY MS. WONG:

09:40:01 14 Q SO ON LINE 12 YOU REPORTED \$10,260. DOES THAT
09:40:05 15 INCLUDE ALL OF THE INCOME THAT YOU MADE FROM YOUR
09:40:07 16 TAX PREPARATION BUSINESS?

09:40:08 17 A I DO NOT RECALL.

09:40:21 18 Q LET'S GO TO EXHIBIT 78. AND BEFORE WE TALK
09:40:24 19 ABOUT 78, JUST TO BE CLEAR, MR. FUNG, YOU DID NOT
09:40:27 20 FILE A TAX RETURN FOR YOUR BUSINESS TRUST FOR THE
09:40:29 21 1999 TAX YEAR, DID YOU?

09:40:31 22 A CORRECT.

09:40:35 23 Q AND YOU HADN'T FILED ONE FOR THE 1999 TAX
09:40:42 24 YEAR, RIGHT?

09:40:45 25 A CORRECT.

09:40:45 1 Q NOW, THIS EXHIBIT 78, IS THIS YOUR INDIVIDUAL
09:40:50 2 INCOME TAX RETURN FOR THE YEAR 2000, YOUR PERSONAL
09:40:53 3 TAX RETURN?

09:40:54 4 A YES.

09:40:54 5 Q AND IF WE TAKE A LOOK AT THIS RETURN AND LOOK
09:40:57 6 AT LINE 7, IT'S ZERO?

09:41:07 7 A CORRECT.

09:41:07 8 Q AND FOR THIS YEAR YOU DIDN'T ALSO FILE A
09:41:12 9 RETURN FOR YOUR BUSINESS TRUST?

09:41:14 10 A NO.

09:41:14 11 Q BUT YOU WERE STILL PREPARING RETURNS FOR
09:41:18 12 MEMBERS OF N.T.S., RIGHT?

09:41:20 13 A YES.

09:41:20 14 Q SO IS IT FAIR TO SAY THAT ALL OF THE INCOME
09:41:26 15 FROM YOUR INCOME TAX RETURN WAS NOT REPORTED ON
09:41:28 16 THIS RETURN?

09:41:29 17 A YES.

09:41:29 18 Q NOW, LET'S GO BACK TO WHEN YOU TOOK THE
09:41:36 19 DEFENDANT UP TO MEDFORD, OREGON. DID YOU DISCUSS
09:41:38 20 ANYTHING ON THE DRIVE BACK TO MEDFORD, OREGON WITH
09:41:45 21 THE DEFENDANT?

09:41:45 22 A YES.

09:41:45 23 Q AND WHAT DID YOU DISCUSS?

09:41:47 24 A I DON'T RECALL. THIS WAS A LONG TIME AGO.

09:41:53 25 Q DID YOU TALK ABOUT TAXES?

09:41:54 1 A YES, I'M SURE WE TALKED ABOUT TAXES.

09:41:56 2 Q NOW, WHEN YOU GOT TO YOUR HOME IN MEDFORD,
09:42:01 3 OREGON, WHAT, IF ANY, DOCUMENTS DID YOU SHOW TO THE
09:42:05 4 DEFENDANT?

09:42:05 5 A MY TAX RETURNS AND MY RECEIPTS FOR ALL OF THE
09:42:09 6 EXPENSES AND ALL OF MY FINANCIAL RECORDS.

09:42:13 7 Q AND WHEN YOU SAY RECEIPTS FOR EXPENSES, WHAT
09:42:16 8 EXPENSES ARE YOU REFERRING TO?

09:42:17 9 A FOR MY BUSINESS EXPENSES.

09:42:18 10 Q AND IS THAT FOR YOUR TAX PREPARATION BUSINESS?

09:42:21 11 A MY COMMERCIAL REAL ESTATE.

09:42:27 12 Q AND HOW ABOUT FOR YOUR TAX PREPARATION
09:42:29 13 BUSINESS?

09:42:29 14 A THAT, TOO, THAT CONSTITUTED A SMALL PART OF
09:42:32 15 IT.

09:42:36 16 Q NOW, YOU SHOWED HIM ALL OF THIS. DID THE
09:42:38 17 DEFENDANT TELL YOU WHAT HE WAS GOING TO DO TO HELP
09:42:40 18 YOU WITH YOUR TAX PROBLEM?

09:42:41 19 A YES.

09:42:42 20 Q AND WHAT DID HE SAY?

09:42:43 21 A HE CAN AMEND ALL OF THE TAX RETURNS FOR ME.

09:42:45 22 Q AND BEFORE HE AMENDED THEM, DID HE SAY
09:42:48 23 ANYTHING ABOUT CREATING ANY OTHER ENTITIES, LIKE
09:42:50 24 CORPORATIONS?

09:42:51 25 A YES.

09:42:51 1 Q WHAT DID THE DEFENDANT SAY ABOUT THAT?

09:42:56 2 A HE SAID WE'RE GOING TO FORM A CORPORATE ENTITY
09:43:05 3 AND REPORT UNDER THE CORPORATE ENTITIES.

09:43:10 4 Q AND DO YOU REMEMBER THE NAME OF THE CORPORATE
09:43:13 5 ENTITY THAT THE DEFENDANT SUGGESTED THAT YOU FORM?

09:43:16 6 A YES.

09:43:16 7 Q AND WHAT IS IT?

09:43:18 8 A CYPRESS DEVELOPMENT CORPORATION.

09:43:20 9 Q NOW, HAD YOU EVER HAD ANY CORPORATIONS BEFORE
09:43:24 10 YOU MET THE DEFENDANT?

09:43:25 11 A NO.

09:43:26 12 Q AND WHAT WAS GOING TO BE THE STRUCTURE OR
09:43:31 13 RELATIONSHIP BETWEEN CYPRESS DEVELOPMENT
09:43:33 14 CORPORATION AND YOUR NATIONAL -- AND YOUR TRUST
09:43:37 15 FROM N.T.S., LIKE CORTLAND TRUST?

09:43:42 16 A ALL OF THE BUSINESS INCOME FROM THE TRUST
09:43:46 17 REPORT UNDER THE CORPORATION.

09:43:47 18 Q AND DID THE DEFENDANT, HE MENTIONED HE WAS
09:43:55 19 GOING TO PREPARE RETURNS FOR YOU.

09:43:57 20 DID HE, DID HE, IN FACT, GO AHEAD AND
09:44:00 21 PREPARE RETURNS?

09:44:00 22 A YES.

09:44:01 23 Q NOW, DID HE PREPARE RETURNS FOR THIS
09:44:06 24 CORPORATION?

09:44:06 25 A YES.

09:44:07 1 Q NOW, WHEN YOU ARE PREPARING RETURNS FOR THIS
09:44:09 2 CORPORATION, WHEN WERE THESE BEING PREPARED?

09:44:15 3 A AT MY HOUSE.

09:44:16 4 Q AND SO THIS WOULD BE IN 2002?

09:44:18 5 A YES.

09:44:19 6 Q AND DID THE DEFENDANT TALK TO YOU ABOUT WHEN
09:44:23 7 YOU WERE GOING TO SAY THAT CORPORATION, CYPRESS
09:44:26 8 DEVELOPMENT CORPORATION, WAS FORMED?

09:44:27 9 A I'M SORRY?

09:44:28 10 Q DID THE DEFENDANT TALK TO YOU ABOUT WHEN IT
09:44:31 11 WOULD BE REPRESENTED THAT THAT CYPRESS DEVELOPMENT
09:44:36 12 CORPORATION WAS FORMED?

09:44:37 13 A YES.

09:44:37 14 Q AND WHAT DID HE TELL YOU?

09:44:38 15 A HE USED A DE FACTO CORPORATION TO GO BACK AND
09:44:45 16 EVEN THOUGH HE DIDN'T HAVE THE PAPERWORK HE SAID
09:44:52 17 THE CORPORATION EXISTS YEARS AGO.

09:44:54 18 Q AND DID YOU KNOW WHAT THAT WORD "DE FACTO"
09:44:57 19 MEANT?

09:44:57 20 A AT THE TIME HE EXPLAINED IT TO ME.

09:45:00 21 Q BUT BEFORE THAT TIME HAD YOU EVER USED THE
09:45:04 22 WORD "DE FACTO CORPORATION"?

09:45:06 23 A NO, NOT AT ALL.

09:45:07 24 Q I'D LIKE TO SHOW YOU, MR. FUNG, WHAT HAS
09:45:10 25 ALREADY BEEN INTRODUCED INTO EVIDENCE AS

GOVERNMENT'S EXHIBIT 79. AND IF WE CAN GO TO THE
FIRST STARTING AT THE TOP HERE.

IS THIS ONE OF THE RETURNS THAT THE
DEFENDANT PREPARED ON YOUR BEHALF?

A YES.

Q AND IF WE GO AND WE TAKE A LOOK AT THE CENTER
OF THE PAGE THAT INCLUDES THE STAMP, I ALSO WANT TO
GET ALL OF THE COMPARISONS OF THE INCOME HERE.

WHEN WAS THIS RECEIVED BY THE I.R.S.?

A MAY 9TH, 2002.

Q NOW, IN THE CENTER YOU CAN SEE THE CHANGES
BETWEEN THE AMENDED RETURN THAT I FILED.

WHAT WAS THE ULTIMATE -- WAS THE AMOUNT
OF INCOME THAT YOU ULTIMATELY REPORTED ON THE
RETURN PREPARED FOR YOU BY THE DEFENDANT HIGHER OR
LOWER THAN THE ORIGINAL AMOUNT ON YOUR ORIGINAL
RETURN THAT YOU PREPARED?

LINE 1. COULD YOU REPEAT THE ANSWER?

A LOWER.

Q NOW, GOING TO THE BOTTOM HERE. IF WE CAN
FOCUS ON THE PREPARER'S SIGNATURE.

WHO SIGNED -- WHO SIGNED THE RETURN AS A
PREPARER?

A THE DEFENDANTS.

Q AND IS THAT THE DEFENDANT'S SIGNATURE THERE?

09:46:41 1 A YES.

09:46:42 2 Q I'D LIKE TO GO TO PAGE 3 OF GOVERNMENT'S
09:46:46 3 EXHIBIT 79 AND FOCUS ON WHAT IS WRITTEN, YOU
09:46:52 4 INCLUDE IN PART 2, AND JUST GET THE OBSTRUCTIONS
09:46:56 5 FOR PART 2 AS WELL.

09:47:10 6 NOW, MR. FUNG, IF YOU CAN TAKE A LOOK AT
09:47:13 7 WHAT IS WRITTEN?

09:47:14 8 A YES.

09:47:14 9 Q THE "ATTACHED HERE TO BY REFERENCES," WHO
09:47:19 10 WROTE THE PART THAT IS IN PART 2?

09:47:23 11 A THE DEFENDANT.

09:47:23 12 Q NOW, IT STATES HERE "PLUS SUBMISSION TO THE
09:47:27 13 GRAND JURIES FOR THE DISTRICT OF COLUMBIA,
09:47:29 14 MASSACHUSETTS, AND CALIFORNIA."

09:47:34 15 WHAT -- DID YOU UNDERSTAND THE PURPOSE OF
09:47:36 16 SUBMITTING ITEMS TO THE GRAND JURY WAS?

09:47:37 17 A NOT EXACTLY.

09:47:39 18 Q AND DID THE DEFENDANT SAY WHAT GRAND JURIES
09:47:45 19 WOULD DO FOR YOU?

09:47:46 20 A YES.

09:47:46 21 Q AND WHAT DID THE DEFENDANT SAY?

09:47:48 22 A THE DEFENDANT SAID THAT, NO, WITH THIS AMENDED
09:47:56 23 RETURN, EITHER ATTACH A WHOLE BUNCH OF DOCUMENTS
09:48:00 24 BEHIND THESE RETURNS.

09:48:02 25 AND THE RETURN IS THEN SENT TO THE I.R.S.

09:48:11 1 CID IN WASHINGTON, D.C. OR SOMETHING.

09:48:14 2 Q AND WHAT DID THE DEFENDANT -- DID THE
09:48:16 3 DEFENDANT TELL YOU WHY YOU HAD TO SEND IT TO I.R.S.
09:48:19 4 CID?

09:48:19 5 A YES.

09:48:20 6 Q AND WHAT DID HE SAY?

09:48:22 7 A HE SAID THAT THE DOCUMENT BEHIND ALL OF THE
09:48:29 8 AMENDED TAX RETURN IS SOMETHING LIKE SOME OF THE
09:48:34 9 TAX CRIME OR SOME TYPE OF CRIME THAT HAD NOT BEEN
09:48:37 10 DEALT WITH OR SOMETHING.

09:48:38 11 Q NOW, THOSE OTHER DOCUMENTS THAT YOU WERE
09:48:41 12 SUPPOSED TO ATTACH TO YOUR RETURN, DID THEY HAVE TO
09:48:44 13 DO WITH YOUR TAX CRIMES?

09:48:45 14 A NO.

09:48:45 15 Q AND SO WHAT WERE THEY SUPPOSED TO -- HOW WERE
09:48:49 16 THEY SUPPOSED TO HELP YOUR TAX PROBLEM? OR WHAT
09:48:55 17 WAS YOUR UNDERSTANDING?

09:48:56 18 A THE DEFENDANT SAID THAT THIS IS GOING TO BE
09:49:02 19 PROSECUTED OR THE PEOPLE BEHIND THE ATTACHMENT
09:49:11 20 WOULD ALSO NEED TO BE PROSECUTED.

09:49:12 21 Q AND SO WHAT DID YOU UNDERSTAND SENDING ALL OF
09:49:17 22 THESE DOCUMENTS TO THE I.R.S. CID, HOW WOULD IT
09:49:20 23 SOLVE YOUR PROBLEMS?

09:49:21 24 A I THOUGHT IT WOULD BE GONE.

09:49:23 25 Q AND DID THE DEFENDANT EXPLAIN HOW IT WOULD BE

09:49:25 1
09:49:25 2
09:49:25 3
09:49:26 4
09:49:28 5
09:49:31 6
09:49:37 7
09:49:38 8
09:49:41 9
09:49:46 10
09:49:49 11
09:49:51 12
09:49:51 13
09:49:54 14
09:49:55 15
09:49:58 16
09:49:59 17
09:50:04 18
09:50:20 19
09:50:22 20
09:50:25 21
09:50:28 22
09:50:29 23
09:50:30 24
09:50:33 25

GONE?

A YES.

Q AND WHAT DID HE SAY?

A THAT THE GOVERNMENT WOULD NOT PROSECUTE ALL OF
THESE ATTACHMENT PERSONS NAME AND EVERYTHING.

Q AND SO HOW WOULD THAT HELP YOU OR WHAT DID YOU
UNDERSTAND?

A SOMETHING ABOUT GRAND JURY.

Q NOW, THESE EXHIBITS 1 THROUGH 34 THAT ARE
REFERRED TO ON GOVERNMENT'S EXHIBIT 79, DID YOU, IN
FACT, ATTACH EXHIBITS TO YOUR RETURNS?

A YES.

Q AND WHO PREPARED THESE EXHIBITS?

A THE DEFENDANTS.

Q THE DEFENDANTS OR THE DEFENDANT?

A THE DEFENDANT.

Q I'D LIKE TO GO NOW TO WHAT IS ALREADY IN
EVIDENCE AS GOVERNMENT'S EXHIBIT 80. AND WE'LL
START AT THE TOP SO IF YOU CAN GET THE LANGUAGE
RIGHT ABOVE U.S. CORPORATION INCOME TAX RETURN.

IS THIS THE 1988 CORPORATE TAX RETURN
THAT THE DEFENDANT PREPARED FOR YOU?

A YES.

Q AND NOW, THIS LANGUAGE THAT APPEARED BEHALF
"ATTACHED HERE TO BY REFERENCES."

09:50:37 1
09:50:40 2
09:50:42 3
09:50:45 4
09:50:47 5
09:50:48 6
09:50:58 7
09:50:59 8
09:51:04 9
09:51:06 10
09:51:10 11
09:51:10 12
09:51:11 13
09:51:16 14
09:51:20 15
09:51:21 16
09:51:23 17
09:51:23 18
09:51:27 19
09:51:28 20
09:51:28 21
09:51:30 22
09:51:33 23
09:51:33 24
09:51:35 25

WHO PUT THAT LANGUAGE ABOVE THE U.S.
CORPORATION INCOME TAX RETURN LINE?
A THE DEFENDANT FORMULATED THAT WORDING.
Q AND DID YOU HAVE ANY ROLE IN PUTTING THE
LANGUAGE UP THERE?
A I TYPED IN AND THEN BASICALLY I FOLLOWED THE
DEFENDANT'S INSTRUCTIONS.
Q NOW, THE RETURN HERE SAYS "CONSOLIDATED."
DID THE DEFENDANT EXPLAIN TO YOU WHY IT
WAS A CONSOLIDATED CORPORATE INCOME TAX RETURN?
A YES.
Q AND WHAT DID HE SAY?
A IT'S ALTOGETHER COMBINED.
Q NOW, YOU HAD PREPARED TAX RETURNS FOR A WHILE
BEFORE THE DEFENDANT HELPED YOU WITH THESE TAX
RETURNS; RIGHT?
A YES.
Q HAD YOU EVER PREPARED A CONSOLIDATED TAX
RETURN?
A NEVER.
Q AND HAD YOU EVER RECEIVED TRAINING ON
PREPARING CONSOLIDATED TAX RETURNS?
A NO.
Q AND WHAT WAS YOUR UNDERSTANDING OF WHETHER YOU
COULD FILE FOR MULTIPLE TAX YEARS AT ONCE?

09:51:38 1
09:51:38 2
09:51:44 3
09:51:45 4
09:51:52 5
09:51:58 6
09:51:58 7
09:52:03 8
09:52:04 9
09:52:04 10
09:52:08 11
09:52:09 12
09:52:10 13
09:52:11 14
09:52:16 15
09:52:16 16
09:52:18 17
09:52:21 18
09:52:22 19
09:52:22 20
09:52:24 21
09:52:28 22
09:52:31 23
09:52:40 24
09:52:44 25

A NOTHING.

Q AND WHEN YOU SAY "NOTHING," COULD YOU EXPLAIN
WHAT YOU MEAN BY THAT?

A I NEVER KNOW THAT PRIOR TO THAT THAT I CAN DO
AN AMENDED RETURN LIKE THIS AND ALTOGETHER REPORT
THE INCOME.

Q AND SO WHO SAID THAT YOU CAN DO A CONSOLIDATED
INCOME LIKE THIS?

A THE DEFENDANTS.

Q AND SO LET'S TAKE A LOOK NOW HERE AT THE NAME
OF THE CORPORATION, THE CYPRESS DEVELOPMENT
CORPORATION.

IS THAT THE CORPORATION THAT THE
DEFENDANT HELPED YOU FORM?

A YES.

Q NOW, IN ADDITION TO WRITING IT HERE ON THIS
TAX RETURN, DID YOU FILE ANY PAPERWORK TO ACTUALLY
FORM A CORPORATION?

A YES.

Q AND WHERE DID YOU FILE THAT PAPERWORK?

A THE STATE OF OREGON, THE SECRETARY OF STATE.

Q AND WHO ACTUALLY FILED THE PAPERWORK?

A HE DID AND I DID ON THE COMPUTER.

Q NOW, LET'S GO LOOK AT BOX C THERE, DATE
INCORPORATED. IT SAYS BEGIN 1997.

09:52:52 1 WAS CYPRESS DEVELOPMENT CORPORATION

09:52:55 2 ACTUALLY IN EXISTENCE IN 1997?

09:52:57 3 A THE CONCEPT OF PAYING A DEVELOPMENT COMPANY IN
09:53:07 4 MY MIND I HAD BEEN DOING DEVELOPMENT WORK BUT NEVER
09:53:11 5 FORMED A CORPORATION.

09:53:11 6 Q AND WHEN DID YOU ACTUALLY FORM THAT
09:53:14 7 CORPORATION?

09:53:14 8 A WHEN THE DEFENDANT CAME TO MY HOUSE.

09:53:16 9 Q NOW, DID THE DEFENDANT EXPLAIN TO YOU WHOSE
09:53:22 10 IDEA IT WAS TO WRITE BEGIN 1997 ON THE RETURN?

09:53:26 11 A THE DEFENDANT'S.

09:53:28 12 Q AND DID THE DEFENDANT EXPLAIN TO YOU WHY YOU
09:53:30 13 COULD WRITE THAT?

09:53:30 14 A YES.

09:53:33 15 Q WHAT DID HE SAY?

09:53:34 16 A HE SAID THAT'S THE CORRECT WAY TO DO IT.

09:53:40 17 Q NOW, IF WE TAKE A LOOK HERE AT LINE 1A.
09:53:50 18 THERE'S 94,168 REPORTED HERE?

09:53:54 19 A YES.

09:53:54 20 Q AND WHERE ARE THOSE GROSS RECEIPTS OR SALES
09:53:58 21 COMING FROM?

09:53:59 22 A THEY COME FROM COMMERCIAL REAL ESTATE
09:54:08 23 ACTIVITIES AND FROM NATIONAL TRUST SERVICES AND
09:54:13 24 ALSO THE TAX PREPARATION FEES.

09:54:14 25 Q NOW, DO YOU RECALL JUST LOOKING AT YOUR 19 --

09:54:20 1 YOUR INDIVIDUAL INCOME TAX RETURN FROM 1998 THAT
09:54:24 2 YOU PREPARED JUST A LITTLE WHILE AGO? WE LOOKED AT
09:54:27 3 THAT.

09:54:27 4 A YES.

09:54:27 5 Q AND WAS THIS NUMBER OR THIS INCOME REPORTED ON
09:54:30 6 THERE?

09:54:30 7 A NO. I'M JUST TRYING TO MAKE SURE I UNDERSTAND
09:54:36 8 THE QUESTION.

09:54:36 9 Q SO REMEMBER LOOKING AT YOUR FORM 1040 FOR
09:54:40 10 1998. IT'S NOT ON THE SCREEN RIGHT NOW, MR. FUNG?

09:54:43 11 A YEAH.

09:54:43 12 Q AND YOU DIDN'T REPORT THE INCOME THAT IS SHOWN
09:54:44 13 ON THE RETURN IN FRONT OF YOU RIGHT NOW ON THAT
09:54:47 14 RETURN?

09:54:47 15 A NO -- YEAH.

09:54:49 16 Q AND NOW, I'D LIKE TO GO TO THE LAST PAGE OF
09:54:52 17 THIS EXHIBIT.

09:55:14 18 AND IF WE CAN JUST HIGHLIGHT THE GROSS
09:55:17 19 RECEIPTS AND SALES AND HIGHLIGHT IT UNDERNEATH.

09:55:19 20 MR. FUNG, COULD YOU TELL THE JURY WHAT IS
09:55:22 21 SHOWN ON THIS PAGE.

09:55:29 22 A THIS PAGE SHOWS THE DIFFERENT ENTITIES THAT I
09:55:31 23 HAVE WITH THE FEDERAL I.D. NUMBER.

09:55:37 24 Q AND WHEN YOU WERE TALKING ABOUT THESE
09:55:41 25 DIFFERENT ENTITIES, THIS IS THE CORTLAND TRUST?

09:55:43 1
09:55:44 2
09:55:46 3
09:55:57 4
09:55:59 5
09:56:04 6
09:56:04 7
09:56:06 8
09:56:07 9
09:56:07 10
09:56:11 11
09:56:12 12
09:56:12 13
09:56:14 14
09:56:18 15
09:56:18 16
09:56:18 17
09:56:20 18
09:56:33 19
09:56:36 20
09:56:38 21
09:56:41 22
09:56:41 23
09:56:41 24
09:56:47 25

A YES.

Q AND WHAT IS THE OTHER ENTITY SHOWN THERE?

A PEGASUS TRUST.

Q AND WHAT WERE THEIR RELATIONSHIPS TO N.T.S.?

A THE PEGASUS TRUST IS WHAT I PURCHASED FROM
N.T.S.

Q AND SO THOSE WERE BOTH TRUSTS THAT YOU
PURCHASED FROM N.T.S.?

A YES.

Q AND IS THAT WHAT WE TALKED ABOUT SHOWN ON PAGE
1 OF THIS RETURN?

A YES.

Q AND SO IS IT FAIR TO SAY THAT THIS CORPORATION
WAS REPORTING THE INCOME FROM YOUR NATIONAL N.T.S.
TRUST?

A YES.

Q ALL RIGHT. I'D LIKE TO LOOK NOW AT
GOVERNMENT'S EXHIBIT 81.

AND IF WE CAN JUST FOCUS ON THE TOP OF
THIS RETURN. IS THIS THE AMENDED TAX RETURN THAT
THE DEFENDANT PREPARED FOR YOU FOR THE 1999 TAX
YEAR?

A YES.

Q AND NOW, IF WE CAN, IF WE CAN GO TO THE CENTER
OF THIS RETURN, INCLUDING THE STAMP.

09:56:51 1
09:56:53 2
09:56:57 3
09:57:03 4
09:57:05 5
09:57:09 6
09:57:16 7
09:57:18 8
09:57:18 9
09:57:20 10
09:57:23 11
09:57:29 12
09:57:31 13
09:57:31 14
09:57:34 15
09:57:35 16
09:57:35 17
09:57:42 18
09:57:56 19
09:57:58 20
09:57:59 21
09:58:10 22
09:58:10 23
09:58:13 24
09:58:17 25

WHEN WAS THIS RETURN RECEIVED?

A MAY 9TH, 2002.

Q AND ACCORDING TO THIS CHART, HOW MUCH MORE MONEY WAS REPORTED ON THE RETURN THAT THE DEFENDANT PREPARED FOR YOU COMPARED TO THE RETURN THAT YOU PREPARED FOR YOU AND YOUR WIFE? WHAT WAS THE DIFFERENCE BETWEEN THE TWO RETURNS?

A INCREASE.

Q AND HOW MUCH WAS THE INCREASE?

A 1,412.

Q AND IF WE JUST GO NOW TO THE BOTTOM BRIEFLY. IS THAT THE DEFENDANT'S SIGNATURE AT THE BOTTOM?

A YES.

Q AND DID HE SIGN THAT RETURN WHILE HE WAS IN OREGON WITH YOU?

A YES.

Q AND I'D LIKE TO GO TO PAGE 3 OF THIS RETURN AND FOCUS ON PART 2, IF YOU CAN GET ALL OF THAT.

NOW, WHO WROTE THE EXPLANATION THAT APPEARS IN PART 2?

A I PROBABLY TYPED IT IN WITH THE HELP OF THE DEFENDANTS.

Q AND NOW, WAS THIS PREPARED AT THE SAME TIME THAT THE 1998 AMENDED RETURNS THAT WE WERE JUST LOOKING AT WERE PREPARED?

09:58:18 1
09:58:18 2
09:58:33 3
09:58:35 4
09:58:36 5
09:58:36 6
09:58:39 7
09:58:41 8
09:58:42 9
09:58:44 10
09:58:48 11
09:58:49 12
09:58:51 13
09:58:57 14
09:59:00 15
09:59:00 16
09:59:05 17
09:59:06 18
09:59:09 19
09:59:12 20
09:59:12 21
09:59:17 22
09:59:28 23
09:59:30 24
09:59:34 25

A YES.

Q LET'S GO TO EXHIBIT 82. IS THIS ANOTHER ONE OF THE RETURNS THAT THE DEFENDANT PREPARED FOR YOU WHILE HE WAS IN OREGON?

A YES.

Q AND THIS IS THE 1999 CORPORATE RETURN FOR CYPRESS DEVELOPMENT CORPORATION?

A THAT'S CORRECT.

Q BUT JUST TO BE CLEAR, YOU HADN'T ACTUALLY INCORPORATED THIS CORPORATION DURING THE 1999 TAX YEAR; IS THAT RIGHT?

A NO.

Q AND WHERE WAS THE INCOME THAT WAS REPORTED ON THIS FIRST CYPRESS DEVELOPMENT CORPORATION COMING FROM?

A ALL OF THE -- ALL OF MY INCOME GENERATING ACTIVITIES.

Q AND WAS -- IS IT -- AND THOSE INCOME GENERATING ACTIVITIES WERE IN YOUR N.T.S. TRUST?

A YES.

Q IF YOU CAN SHOW, MR. FUNG, GOVERNMENT'S EXHIBIT 83.

IS THIS THE AMENDED RETURN THAT THE DEFENDANT PREPARED FOR YOU FOR THE 2000 TAX YEAR?

A YES.

09:59:34 1 Q AND IF WE CAN TAKE A LOOK AT THE CENTER HERE,
09:59:42 2 THE INCOME AND DEDUCTIONS SECTION.

09:59:52 3 MR. FUNG, WAS THE INCOME REPORTED ON THE
09:59:54 4 RETURN THAT THE DEFENDANT PREPARED FOR YOU HIGHER
09:59:57 5 OR LOWER THAN THE RETURN THAT YOU PREPARED?

09:59:59 6 A LOWER.

09:59:59 7 Q NOW, IF WE CAN GO TO PAGE 2 OF THIS EXHIBIT,
10:00:09 8 AND ONCE AGAIN, LOOK AT THE EXPLANATION.

10:00:11 9 WHO CAME UP WITH THE LANGUAGE THAT WAS
10:00:23 10 PUT IN PART 2?

10:00:23 11 A THE DEFENDANTS.

10:00:25 12 Q AND IT SAYS HERE THAT "THE FORM 1040 ATTACHED
10:00:29 13 HERETO IS PROVIDED FOR DISCLOSURE PURPOSES."

10:00:32 14 DID THE DEFENDANT EXPLAIN WHY YOU HAD TO
10:00:34 15 ATTACH THE FORM 1040?

10:00:41 16 A YES.

10:00:41 17 Q WHAT DID HE SAY?

10:00:42 18 A I DON'T RECALL EXACTLY.

10:00:43 19 Q DO YOU RECALL THE GENERAL NATURE OF WHAT HE
10:00:45 20 TOLD YOU?

10:00:45 21 A NO.

10:00:53 22 Q AND WAS THIS FORM ALSO SENT -- WAS THIS ALSO A
10:00:58 23 FORM THAT THE DEFENDANT INSTRUCTED YOU TO SEND TO
10:01:02 24 I.R.S. CID?

10:01:03 25 A YES.

10:01:03 1 Q AND LET'S TAKE A LOOK AT GOVERNMENT'S
10:01:05 2 EXHIBIT 84. AND GOING UP TO THE TOP. IS THIS
10:01:17 3 ANOTHER ONE OF THE RETURNS THAT THE DEFENDANT
10:01:19 4 PREPARED FOR YOU WHILE HE WAS UP IN OREGON?

10:01:21 5 A YES.

10:01:21 6 Q AND AGAIN, WAS CYPRESS DEVELOPMENT
10:01:25 7 CORPORATION, HAD IT ACTUALLY BEEN INCORPORATED BY
10:01:28 8 THE 2000 TAX YEAR?

10:01:29 9 A NO.

10:01:30 10 Q AND WHO PREPARED THIS RETURN?

10:01:32 11 A I PROBABLY INPUT THE NUMBERS ON THE COMPUTER
10:01:41 12 WITH THE DEFENDANT INSTRUCTING HOW TO DO IT.

10:01:43 13 Q AND WHEN YOU SAY "INSTRUCTING HOW TO DO IT,"
10:01:47 14 WHO CAME UP WITH THE NUMBERS ON THIS RETURN?

10:01:49 15 A FROM THE RECEIPTS AND RECORDS THAT I PUT BACK,
10:01:56 16 YOU KNOW, TOGETHER.

10:01:57 17 Q AND DID THE DEFENDANT -- DID YOU OR THE
10:01:59 18 DEFENDANT COME UP WITH THE NUMBERS BASED ON THOSE
10:02:01 19 RECEIPTS OR DID YOU DO IT TOGETHER?

10:02:03 20 A I, I ADD ALL OF THE REVENUE AND EXPENSES
10:02:11 21 TOGETHER, YEAH.

10:02:11 22 Q AND HOW, IF AT ALL, DID THE DEFENDANTS
10:02:14 23 INSTRUCT YOU IN PREPARING THIS RETURN?

10:02:16 24 A TELL ME EXACTLY WHAT TO DO.

10:02:24 25 Q NOW, AFTER YOU HAD PREPARED THESE RETURNS, DID

10:02:32 1 THE DEFENDANT TELL YOU WHERE YOU HAD TO SEND THEM?

10:02:35 2 A YES.

10:02:36 3 Q AND WHERE WAS THAT?

10:02:37 4 A THE I.R.S. CID IN WASHINGTON, D.C.

10:02:44 5 Q AND HAD YOU EVER SENT ANYTHING TO THE I.R.S.

10:02:47 6 CID IN WASHINGTON, D.C. BEFORE?

10:02:50 7 A NO.

10:02:50 8 Q AND DO YOU KNOW WHAT CID STANDS FOR?

10:02:53 9 A YES.

10:02:53 10 Q AND WHAT IS IT?

10:02:54 11 A CRIMINAL INVESTIGATION DIVISION.

10:02:57 12 Q NOW, DID THE DEFENDANT TELL YOU ANYTHING ABOUT

10:03:04 13 WHAT THE EFFECT OF SENDING THOSE RETURNS WOULD HAVE

10:03:07 14 ON ANY JURISDICTION OF AGENT BROWN OVER YOUR AUDIT?

10:03:10 15 A YES.

10:03:10 16 Q AND WHAT DID HE TELL YOU?

10:03:11 17 A NO JURISDICTION.

10:03:12 18 Q AND DID THE DEFENDANT EXPLAIN WHY AGENT BROWN

10:03:15 19 WOULD LOSE JURISDICTION IF YOU SENT IT TO I.R.S.

10:03:19 20 CID?

10:03:19 21 A YES.

10:03:21 22 Q AND WHAT DID HE TELL YOU?

10:03:22 23 A HE SAID THAT THE CRIMINAL DIVISION IS SEPARATE
10:03:33 24 FROM THE EXAMINATION DIVISION.

10:03:35 25 Q AND WHAT WAS YOUR UNDERSTANDING OF -- DID YOU

10:03:37 1
10:03:40 2
10:03:43 3
10:03:48 4
10:03:50 5
10:03:53 6
10:03:54 7
10:03:57 8
10:03:57 9
10:03:58 10
10:04:01 11
10:04:05 12
10:04:05 13
10:04:08 14
10:04:13 15
10:04:14 16
10:04:16 17
10:04:19 18
10:04:20 19
10:04:23 20
10:04:26 21
10:04:31 22
10:04:32 23
10:04:35 24
10:04:35 25

HAVE AN UNDERSTANDING OF WHETHER OR NOT THE
CRIMINAL I.R.S. CID DID AUDITS OF PEOPLE?

A NO, I REALLY DON'T UNDERSTAND AT THAT TIME.

Q AND DID THE DEFENDANT TELL YOU ANYTHING ABOUT
WHETHER I.R.S. CID DID AUDITS?

A NO.

Q NOW, DID YOU FOLLOW THE DEFENDANT'S
INSTRUCTIONS?

A YES.

Q AND, NOW, WITH THESE RETURNS, DID YOU SEND ANY
OTHER DOCUMENTS?

A YES.

Q WHAT SORT OF DOCUMENTS DID YOU SEND?

A ALL OF THE DOCUMENTS THAT THE DEFENDANT --
BOXES OF STUFF.

Q AND WHERE DID THE BOXES OF STUFF COME FROM?

A THE DEFENDANT BROUGHT IT OVER FROM HAWAII AND
ALSO SOME CD'S.

Q AND WHAT WERE THOSE CD'S, IF ANYTHING, USED
FOR WHILE HE WAS IN MEDFORD, OREGON?

A OPEN MAIL AND PRINTED MAIL.

Q AND WERE THOSE -- AND WHAT WAS PRINTED OUT,
WAS THAT IN THE BOXES?

A YES.

Q DID THE DEFENDANT PREPARE ANYTHING -- DID HE

10:04:41 1 WRITE OUT ANY OTHER DOCUMENTS THAT WENT WITH YOUR
10:04:43 2 RETURNS TO WASHINGTON, D.C.?
10:04:45 3 A YES.
10:04:45 4 Q AND WHAT DID HE WRITE OUT?
10:04:47 5 A A FEW PAGES OF DOCUMENTS.
10:04:57 6 Q AND DID YOU SEND THAT TO I.R.S. CID, TOO?
10:05:00 7 A YES.
10:05:00 8 Q AND WHO ACTUALLY MAILED ALL OF THE DOCUMENTS
10:05:02 9 TO I.R.S. CID?
10:05:04 10 A I DID.
10:05:04 11 Q AND NOW, WHAT DID YOU UNDERSTAND WOULD HAPPEN
10:05:10 12 AFTER YOU MAILED IN ALL OF THE DOCUMENTS?
10:05:12 13 A THAT MY PROBLEM WOULD BE RESOLVED.
10:05:22 14 Q NOW, WHEN YOU MAILED IN THE DOCUMENTS, DID YOU
10:05:28 15 SEND ANY MONEY TO THE I.R.S.?
10:05:29 16 A YES.
10:05:29 17 Q AND HOW MUCH MONEY DID YOU SEND TO THE I.R.S.?
10:05:34 18 A THE TAXES I OWE ON THOSE AMENDED RETURNS.
10:05:37 19 Q NOW, AROUND THE TIME THAT YOU WERE HIRING THE
10:05:52 20 DEFENDANT, WERE YOU STILL PREPARING TAXES AS WELL
10:05:54 21 FOR MEMBERS OF N.T.S.?
10:05:55 22 A YES.
10:05:55 23 Q NOW, WHEN YOU WERE -- AT THIS TIME YOU WERE --
10:05:58 24 HAD BEEN INTERACTING WITH AGENT BROWN, RIGHT, ABOUT
10:06:01 25 THE LAWSUIT?

10:06:02 1 A YES, YES.

10:06:03 2 Q AND DID YOU CONTINUE TO GET NOTICES OR
10:06:07 3 MAILINGS FROM THE I.R.S. ABOUT THEIR INVESTIGATION
10:06:09 4 AFTER YOU SENT IN THE BOXES?

10:06:11 5 A YES.

10:06:11 6 Q AND HOW DID YOU FEEL WHEN YOU GOT THOSE
10:06:16 7 NOTICES?

10:06:16 8 A THAT I NEEDED TO DEAL WITH IT.

10:06:24 9 Q WERE YOU FEELING HAPPY? OR SCARED? HOW DID
10:06:27 10 YOU FEEL IN TERMS OF YOUR EMOTIONS WHEN YOU SAW
10:06:33 11 THOSE NOTICES?

10:06:34 12 A NOT HAPPY.

10:06:39 13 Q AND HOW DID YOU FEEL THEN?

10:06:41 14 A THAT IT WAS A BIG HEADACHE.

10:06:43 15 Q NOW, THESE RETURNS THAT YOU WERE STILL
10:06:45 16 PREPARING FOR MEMBERS OF NATIONAL TRUST SERVICES,
10:06:48 17 I'D LIKE TO TAKE A LOOK NOW AT GOVERNMENT'S
10:06:52 18 EXHIBIT 127.

10:07:09 19 AND I SPECIFICALLY JUST WANT TO -- IS
10:07:12 20 THIS -- THE 2001 1041 RETURN FOR MG TRUST.

10:07:17 21 DID YOU PREPARE THIS RETURN, MR. FUNG?

10:07:20 22 A YES.

10:07:20 23 Q AND I WANT TO FOCUS ON THE BOTTOM, THE
10:07:22 24 SIGNATURE BLOCK HERE.

10:07:23 25 DID YOU SIGN THIS RETURN?

10:07:25 1
10:07:29 2
10:07:33 3
10:07:35 4
10:07:36 5
10:07:37 6
10:07:41 7
10:07:43 8
10:07:46 9
10:07:50 10
10:07:51 11
10:07:54 12
10:07:56 13
10:07:59 14
10:08:01 15
10:08:03 16
10:08:06 17
10:08:20 18
10:08:21 19
10:08:21 20
10:08:25 21
10:08:31 22
10:08:36 23
10:08:38 24
10:09:04 25

A YES.

Q AND HERE WHERE YOUR FIRM'S NAME IS LISTED,
WHAT DID YOU WRITE? COULD YOU JUST READ IT TO THE
JURY?

A CT MANAGEMENT.

Q AND WHAT WAS THAT AN ABBREVIATION FOR?

A CORTLAND TRUST MANAGEMENT.

Q NOW, ON PRIOR RETURNS, HAD YOU ACTUALLY USED A
DIFFERENT -- HAD YOU WRITTEN OR PUT DOWN YOUR
FIRM'S NAME DIFFERENTLY?

A YES.

Q AND HOW HAD YOU DONE IT BEFORE?

A A STAMP.

Q BUT THIS RETURN -- AND WHAT WAS THE DATE THAT
YOU SIGNED THIS RETURN AND PREPARED IT ON?

A APRIL 20TH, 2002.

Q AND IS THAT AROUND THE TIME THAT YOU STARTED
WORKING WITH THE DEFENDANT?

A YES.

Q NOW, I'D LIKE TO GO TO GOVERNMENT'S
EXHIBIT 123. OKAY. HIGHLIGHT THE FIRST -- THE TOP
AREA SO THE JURORS CAN SEE THE NAME.

IS THIS THE CORPORATE INCOME TAX RETURN
THAT YOU PREPARED FOR MUDRACHI, INC.?

133. ACTUALLY GO TO 132.

10:09:13 1 NOW, IS THIS THE CORPORATE INCOME TAX
10:09:16 2 RETURN THAT YOU PREPARED FOR MG, INC.?

10:09:19 3 A YES.

10:09:21 4 THE COURT: WHICH EXHIBIT IS THIS?

10:09:23 5 MS. WONG: 132. 132, IT'S ALREADY IN
10:09:26 6 EVIDENCE.

10:09:26 7 THE COURT: 132.

10:09:28 8 MS. WONG: YEAH.

10:09:29 9 THE COURT: THANK YOU.

10:09:30 10 BY MS. WONG:

10:09:31 11 Q NOW, IF WE CAN PULL UP THE EXHIBIT THAT WE
10:09:33 12 WERE JUST TAKING A LOOK AT. THAT'S EXHIBIT 127.

10:10:00 13 GO TO THE FIRST PAGE OF THOSE. AND JUST
10:10:08 14 ZOOM IN ON THE TOP PART THERE SO THE JURORS CAN SEE
10:10:11 15 THE NAMES OF BOTH ENTITIES.

10:10:13 16 NOW, FOR THE 2001 TAX YEAR, THE NAME --
10:10:19 17 WHAT IS THE NAME THAT IS WRITTEN ON THE TRUST
10:10:22 18 RETURN, MR. FUNG?

10:10:23 19 A MG TRUST.

10:10:25 20 Q AND FOR THE 2002 RETURN, WHAT IS THE NAME OF
10:10:30 21 THE ENTITY WRITTEN ON THE CORPORATE TAX RETURN?

10:11:04 22 WHAT IS THE NAME WRITTEN ON GOVERNMENT'S
10:11:06 23 EXHIBIT 132 AS THE NAME OF THE ENTITY?

10:11:10 24 A MG, INC.

10:11:14 25 Q NOW, IN 2001 IT WAS MG TRUST, RIGHT?

10:11:18 1
10:11:18 2
10:11:22 3
10:11:25 4
10:11:32 5
10:11:35 6
10:11:40 7
10:11:41 8
10:11:45 9
10:11:45 10
10:11:48 11
10:11:50 12
10:11:51 13
10:11:51 14
10:11:55 15
10:12:01 16
10:12:04 17
10:12:04 18
10:12:07 19
10:12:07 20
10:12:12 21
10:12:15 22
10:12:16 23
10:12:28 24
10:12:33 25

A YES.

Q NOW, HOW DID -- WHAT ROLE DID YOU HAVE IN THE NAME ON THE RETURN GOING FROM MG TRUST TO MG, INC.?

A I PREPARED IT.

Q AND WHAT, IF ANY, ADVICE DID YOU GIVE TO THE TAXPAYER ABOUT FILING A CORPORATE RETURN, RATHER THAN A TRUST RETURN?

A THE DEFENDANT TOLD ME THAT THIS NEEDED TO BE DONE.

Q AND SO DID YOU -- DID YOU HAVE A ROLE IN PASSING ON THAT INFORMATION TO ANYONE BESIDES YOURSELF?

A YES.

Q AND SO WHO DID YOU GIVE THAT INFORMATION TO?

A JEAN-PAUL BOURDIER.

Q AND HE WAS ONE OF YOUR TAX RETURN CLIENTS?

A YES.

Q AND ALSO A MEMBER OF N.T.S.?

A YES.

Q AND WHAT WAS THE REASON THAT YOU TOLD MR. BOURDIER THAT IT WAS BETTER TO FILE A CORPORATE RETURN THAN A TRUST RETURN?

A THAT THE I.R.S. HAS PUT ALL OF THE TRUST RETURN THROUGH AUDIT; THAT ALL OF THE REVENUE INCOME NEEDS TO BE REPORTED UNDER THE CHANGE OF

10:12:36 1 ENTITY OR CORPORATION.

10:12:37 2 Q NOW, IF WE TAKE A LOOK AT THE BOTTOM OF
10:12:41 3 GOVERNMENT'S EXHIBIT 132. YOU SAID YOU PREPARED
10:12:52 4 THIS RETURN. DID YOU SIGN IT?

10:12:53 5 A NO.

10:12:53 6 Q NOW, WHY DIDN'T YOU SIGN THIS RETURN?

10:12:56 7 A I DON'T WANT TO BE RESPONSIBLE FOR IT.

10:13:01 8 Q AND WHEN YOU SAY YOU DON'T WANT TO BE
10:13:04 9 RESPONSIBLE, WHAT, IF ANYTHING, WERE YOU CONCERNED
10:13:06 10 ABOUT THE I.R.S. DISCOVERING?

10:13:08 11 A THE AUDIT.

10:13:13 12 Q AND IN ADDITION TO DEALING WITH THAT AUDIT,
10:13:16 13 DID THERE COME A TIME WHEN THE I.R.S. TRIED TO STOP
10:13:19 14 YOU FROM PREPARING RETURNS?

10:13:24 15 A YES.

10:13:24 16 Q AND HOW DID YOU LEARN THAT THE I.R.S. WAS
10:13:26 17 TRYING TO STOP YOU FROM PREPARING RETURNS?

10:13:28 18 A ON CHRISTMAS DAY A CLIENT CALLED ME SAYING
10:13:31 19 THAT MY NAME IS IN THE NEWSPAPER.

10:13:33 20 Q AND DID YOU EVENTUALLY GO AND LOOK AT THAT
10:13:36 21 NEWSPAPER?

10:13:36 22 A YES.

10:13:37 23 Q AND WHAT DID YOU DETERMINE THE I.R.S. WAS
10:13:40 24 TRYING TO STOP YOU FROM DOING?

10:13:41 25 A FROM FILING SOMETHING CALLED A PERMANENT

10:13:45 1 INJUNCTION AGAINST ME.

10:13:46 2 Q AND WHAT DID YOU UNDERSTAND THIS PERMANENT
10:13:48 3 INJUNCTION WAS SUPPOSED TO DO?

10:13:50 4 A DO NOT DO ANY TAX RETURNS.

10:13:56 5 Q SO YOU LEARNED THAT ON CHRISTMAS DAY. AND
10:14:00 6 JUST TO GO BACK TO GOVERNMENT'S EXHIBIT 132 TO THE
10:14:06 7 STAMP. WHEN WAS THAT EXHIBIT 132 FILED ACCORDING
10:14:10 8 TO THE STAMP, MR. FUNG?

10:14:11 9 A JUNE 1ST, 2003.

10:14:18 10 Q NOW, WITH REGARDS TO -- WAS THERE EVENTUALLY
10:14:24 11 PAPERWORK OR A LAWSUIT FILED TO GET THAT PERMANENT
10:14:26 12 INJUNCTION AGAINST YOU BY THE GOVERNMENT? DID THE
10:14:31 13 GOVERNMENT FILE A LAWSUIT TO GET A PERMANENT
10:14:33 14 INJUNCTION AGAINST YOU?

10:14:34 15 A YES.

10:14:34 16 Q AND DID YOU RECEIVE THAT PAPERWORK?

10:14:36 17 A NO.

10:14:36 18 Q DID YOU END UP HAVING TO GO TO COURT IN THE
10:14:40 19 PERMANENT INJUNCTION CASE?

10:14:41 20 A YES.

10:14:41 21 Q AND DID YOU AT THAT TIME SEE SOME OF THE
10:14:44 22 PAPERWORK OR THE COMPLAINT THAT HAD BEEN FILED TO
10:14:47 23 GET THE PERMANENT INJUNCTION?

10:14:48 24 A YES.

10:14:48 25 Q DO YOU RECALL THE DATE THAT THE PERMANENT

10:14:53 1 INJUNCTION WAS FILED AGAINST YOU?

10:14:54 2 A NOT EXACTLY, NO.

10:14:57 3 Q WOULD THE -- SEEING THE DOCKET SHEET FROM THAT
10:15:01 4 CASE REFRESH YOUR RECOLLECTION?

10:15:02 5 A YES.

10:15:02 6 Q IS YOUR RECOLLECTION REFRESHED?

10:15:28 7 A YES.

10:15:28 8 Q AND WHAT WAS THE DATE THAT THE PERMANENT
10:15:30 9 INJUNCTION WAS FILED AGAINST YOU?

10:15:31 10 A DECEMBER 23RD, 2003.

10:15:35 11 Q AND WHAT WAS THE RESULT OF THAT LAWSUIT TO GET
10:15:41 12 THE PERMANENT INJUNCTION? DID YOU WIN OR LOSE?

10:15:47 13 A I BELIEVE THAT WAS RESOLVED. I DON'T DO
10:15:53 14 ANYTHING.

10:15:53 15 Q AND WHEN YOU SAY YOU DON'T DO ANYTHING, WHAT,
10:15:56 16 AFTER IT WAS RESOLVED, WERE YOU OR WERE YOU NOT
10:15:59 17 ALLOWED TO DO WITH TAX RETURNS?

10:16:01 18 A NOT ALLOWED.

10:16:05 19 Q AND WAS THAT RESOLUTION, WAS THAT ON
10:16:07 20 FEBRUARY 11TH OF 2004?

10:16:08 21 A YES.

10:16:09 22 Q NOW, AFTER THE PERMANENT INJUNCTION WAS --
10:16:21 23 AFTER THE UNITED STATES FILED FOR A PERMANENT
10:16:23 24 INJUNCTION AGAINST YOU, BUT BEFORE YOU RESOLVED IT
10:16:28 25 ON FEBRUARY -- IN FEBRUARY OF 2004, WERE YOU

10:16:31 1 VISITED BY SPECIAL AGENT BONANO FROM THE I.R.S.?

10:16:35 2 A I DON'T RECALL THE TIME, BUT I DID GET A VISIT
10:16:41 3 FROM SPECIAL AGENT KENNETH BONANO.

10:16:44 4 Q AND AFTER YOU RECEIVED THAT VISIT, DID YOU
10:16:47 5 SEND ANY LETTER TO MR. BONANO?

10:16:50 6 A I THINK I DID.

10:16:57 7 Q WOULD SEEING THAT LETTER PERHAPS REFRESH YOUR
10:16:59 8 RECOLLECTION AS TO THE DATE?

10:17:01 9 A YES.

10:17:01 10 Q I'M SHOWING MR. FUNG WHAT HAS BEEN MARKED AS
10:17:07 11 GOVERNMENT'S EXHIBIT 101 FOR IDENTIFICATION
10:17:10 12 PURPOSES.

10:17:12 13 THE COURT: DO YOU HAVE THIS, MR. FONG?

10:17:15 14 MR. FONG: YES.

10:17:17 15 BY MS. WONG:

10:17:18 16 Q DO YOU RECOGNIZE GOVERNMENT'S EXHIBIT 101,
10:17:20 17 MR. FUNG?

10:17:21 18 A YES.

10:17:22 19 Q AND WHAT IS IT?

10:17:28 20 A IT'S A LETTER THAT I SENT TO SPECIAL AGENT
10:17:31 21 KENNETH BONANO.

10:17:31 22 Q AND IS THAT YOUR SIGNATURE AT THE BOTTOM?

10:17:33 23 A YES.

10:17:33 24 Q AND IS THAT A FAIR AND ACCURATE COPY OF THE
10:17:36 25 LETTER THAT YOU SENT HIM?

10:17:37 1 A YES.

10:17:40 2 MS. WONG: AT THIS TIME THE GOVERNMENT
10:17:41 3 OFFERS GOVERNMENT'S EXHIBIT 101 INTO EVIDENCE.

10:17:44 4 MR. FONG: NO OBJECTION.

10:17:44 5 THE COURT: IT'S RECEIVED AT THIS TIME.

10:17:46 6 (WHEREUPON, GOVERNMENT'S EXHIBIT NUMBER
10:17:46 7 101, HAVING BEEN PREVIOUSLY MARKED FOR
10:17:46 8 IDENTIFICATION, WAS ADMITTED INTO
10:17:47 9 EVIDENCE.)

10:17:47 10 BY MS. WONG:

10:17:47 11 Q NOW, ACCORDING TO THIS LETTER, MR. FUNG, WHEN
10:17:50 12 DID SPECIAL AGENT BONANO VISIT YOU?

10:17:55 13 A IN THE MONTH OF MARCH 2003.

10:17:58 14 Q NOW, WHO PREPARED THIS LETTER?

10:18:10 15 A THE DEFENDANT HELPED ME WITH THE VERBIAGE.

10:18:12 16 Q AND WHEN YOU SAY THE DEFENDANT HELPED YOU,
10:18:24 17 AFTER SPECIAL AGENT BONANO VISITED YOU, DID YOU
10:18:26 18 CONTACT THE DEFENDANT?

10:18:27 19 A YES.

10:18:27 20 Q AND WHAT DID YOU TELL HIM?

10:18:29 21 A I TOLD HIM WHAT HAPPENED.

10:18:35 22 Q AND WHAT DID THE DEFENDANT SAY WHEN YOU TOLD
10:18:37 23 HIM?

10:18:37 24 A THAT I NEED TO WRITE THE AGENT A LETTER.

10:18:43 25 Q AND IF WE CAN FOCUS ON THE FIRST PARAGRAPH,

10:18:53 1 PARAGRAPH THEREIN.

10:18:58 2 WHAT ARE THE FELONY CONFESSIONS OVER THE
10:19:04 3 GRAND JURIES THAT IS MENTIONED IN THIS LETTER?

10:19:13 4 WHAT IS THAT REFERRING TO?

10:19:15 5 A NOW I REMEMBER ON THE RETURN THAT I SENT TO
10:19:21 6 THE I.R.S. CID THAT I MADE SOME TYPE OF CONFESSION
10:19:27 7 INSTRUCTED BY THE DEFENDANT.

10:19:28 8 Q AND WHEN YOU SAY "SOME TYPE OF CONFESSIONS" DO
10:19:32 9 YOU RECALL WHAT THOSE CONFESSIONS RELATED TO?

10:19:35 10 A I DON'T RECALL.

10:19:39 11 Q DID THEY HAVE ANYTHING TO DO WITH TAXES?

10:19:41 12 A YES.

10:19:41 13 Q AND DID THE DEFENDANT TELL YOU ANYTHING ABOUT
10:19:43 14 WHY YOU SHOULD MAKE FELONY CONVICTIONS TO THE
10:19:45 15 CRIMINAL INVESTIGATION DIVISION OF THE I.R.S.?

10:19:47 16 A I THINK THE DEFENDANT SAID THAT IF I MAKE THE
10:19:58 17 CONFESSION, THERE'S NO DOCUMENT, NO DISPUTE.

10:20:01 18 Q AND WHAT EFFECT WOULD THAT HAVING NO DISPUTE
10:20:04 19 HAVE ON YOUR TAX PROBLEMS?

10:20:05 20 A IT WOULD BE RESOLVED.

10:20:10 21 Q NOW, GOING TO ANOTHER PART OF GOVERNMENT'S
10:20:13 22 EXHIBIT 101, IT ALSO -- THIS LETTER ALSO SAYS THAT
10:20:17 23 THE CONFESSIONS ARE THE EXCLUSIVE PROPERTY OF THE
10:20:19 24 U.S. GRAND JURIES AND ARE PER SE CONDITIONAL BUT
10:20:26 25 EXPRESSLY OUTSIDE OF YOUR JURISDICTION.

10:20:29 1 NOW, WHEN THE LETTER SAYS THAT IT'S
10:20:31 2 OUTSIDE SPECIAL AGENT BONANO'S JURISDICTION, WHAT
10:20:34 3 DID YOU UNDERSTAND THAT THIS LETTER WAS GOING TO
10:20:37 4 ACCOMPLISH?

10:20:37 5 A THAT THEY WOULD, YOU KNOW, NOT DEAL WITH IT.

10:20:49 6 Q AND WHEN YOU SAY "THEY WON'T DEAL WITH IT,"
10:20:53 7 WHO WON'T DEAL WITH IT?

10:20:54 8 A THE AGENT KENNETH BONANO.

10:20:57 9 Q BUT AT THAT TIME DID YOU ALSO KNOW THAT AGENT
10:21:00 10 BONANO WAS FROM I.R.S. CID?

10:21:02 11 A YES.

10:21:03 12 Q NOW, IN ADDITION TO SENDING THAT LETTER TO
10:21:09 13 AGENT BONANO, DID YOU ALSO SUBMIT A -- DID YOU FILE
10:21:14 14 ANY OTHER DOCUMENTS WITH REGARDS TO A DEMAND FOR A
10:21:20 15 GRAND JURY?

10:21:20 16 A YES, I DID.

10:21:26 17 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED FOR
10:21:29 18 IDENTIFICATION PURPOSES AS GOVERNMENT'S EXHIBIT 42,
10:21:38 19 AND I'LL ASK IF YOU RECOGNIZE THAT.

10:21:39 20 THE COURT: CAN YOU SEE THOSE, MR. FONG?

10:21:41 21 MR. FONG: YES.

10:21:49 22 THE WITNESS: YES, I RECOGNIZE THAT.

10:21:50 23 BY MS. WONG:

10:21:51 24 Q AND WHAT IS GOVERNMENT'S EXHIBIT 42?

10:21:53 25 A IT'S TO THE I.R.S. CID.

10:22:07 1 Q AND DO YOU KNOW WHO PREPARED THAT DOCUMENT?

10:22:09 2 A YES.

10:22:09 3 Q AND HOW DO YOU KNOW THAT?

10:22:12 4 A IT'S BEING PREPARED BY THE DEFENDANTS.

10:22:16 5 Q AND DID YOU SIGN THAT DOCUMENT?

10:22:17 6 A YES.

10:22:20 7 Q IS IT A FAIR AND ACCURATE COPY OF THE DOCUMENT
10:22:23 8 THAT THE DEFENDANT PREPARED AND YOU SIGNED?

10:22:26 9 A YES.

10:22:27 10 MS. WONG: AT THIS TIME THE GOVERNMENT
10:22:28 11 WOULD SEEK TO ADMIT GOVERNMENT'S EXHIBIT 42.

10:22:34 12 MR. FONG: NO OBJECTION.

10:22:35 13 THE COURT: IT'S RECEIVED WITHOUT
10:22:36 14 OBJECTION.

10:22:36 15 (WHEREUPON, GOVERNMENT'S EXHIBIT NUMBER 42,
10:22:36 16 HAVING BEEN PREVIOUSLY MARKED FOR
10:22:36 17 IDENTIFICATION, WAS ADMITTED INTO
10:22:37 18 EVIDENCE.)

10:22:37 19 BY MS. WONG:

10:22:47 20 Q LET ME PUBLISH IT TO THE JURY. NOW, MR. FUNG,
10:22:50 21 COULD YOU EXPLAIN TO THE JURY WHAT YOU THOUGHT
10:22:52 22 EXHIBIT 42, THIS DECLARATION PLUS SUBMISSION FOR
10:22:55 23 DEMAND TO THE UNITED STATES GRAND JURIES, WOULD
10:22:59 24 ACCOMPLISH?

10:23:00 25 A THAT THE PROBLEM WOULD DISAPPEAR.

10:23:17 1 Q AND WHEN YOU SAY "THE PROBLEM," WHAT PROBLEM?

10:23:20 2 A THE TAX PROBLEMS THAT I WAS TOLD THAT I WAS
10:23:23 3 BEING TARGETED.

10:23:24 4 Q NOW, IF WE FOCUS ON THE LAST PARAGRAPH HERE ON
10:23:27 5 PAGE 1, IT BEGINS, "THIS DECLARATION IS FILED BY
10:23:34 6 SAMUEL S. FUNG."

10:23:37 7 DID YOU INTEND TO REVOKE AND CONFIRM
10:23:40 8 REVOCATION OF YOUR STATE CITIZENSHIP AS STATED IN
10:23:43 9 THIS PARAGRAPH?

10:23:44 10 A NO.

10:23:45 11 Q DID YOU UNDERSTAND WHEN YOU SIGNED THIS
10:23:47 12 DOCUMENT WHAT THIS PARAGRAPH MEANT?

10:23:49 13 A NOT EXACTLY.

10:23:50 14 Q WHO CAME UP WITH THE LANGUAGE IN THIS
10:23:54 15 PARAGRAPH AND THE OTHER PARAGRAPHS?

10:23:56 16 A THE DEFENDANTS.

10:23:57 17 Q NOW, IF WE GO TO THE LAST PAGE OF THIS, OF
10:24:08 18 THIS DOCUMENT AND IF WE FOCUS STARTING ON THE FIRST
10:24:26 19 FULL PARAGRAPH ON HERE.

10:24:33 20 AND THIS FIRST PARAGRAPH MENTIONS THE
10:24:36 21 COMMITTING TO FILE CORPORATE TAX RETURNS.

10:24:40 22 WHOSE IDEA WAS IT TO HELP NATIONAL TRUST
10:24:44 23 SERVICES FILE CORPORATE TAX RETURNS?

10:24:45 24 A THE DEFENDANT'S.

10:24:46 25 Q AND WAS THIS DOCUMENT PREPARED ON OR ABOUT

10:24:48 1 AUGUST 27TH OF 2003 AS SHOWN AT THE BOTTOM THERE?

10:24:52 2 A YES.

10:24:52 3 Q AND WHERE DID YOU SEND THIS DOCUMENT AFTER YOU
10:24:55 4 SIGNED IT?

10:24:55 5 A I.R.S. CID.

10:25:05 6 Q AND NOW, IN A -- WERE YOU -- WAS EVERYTHING IN
10:25:09 7 THAT DECLARATION THAT WE HAVE JUST LOOKED AT,
10:25:11 8 GOVERNMENT'S EXHIBIT 42, WAS ALL OF THAT COMPLETELY
10:25:13 9 TRUTHFUL AND ACCURATE?

10:25:14 10 A YES.

10:25:15 11 Q AND SO YOU INTENDED TO REVOKE YOUR CITIZENSHIP
10:25:23 12 AS WE LOOKED AT THE FIRST PARAGRAPH THERE?

10:25:25 13 A AT THAT TIME I WAS NOT THINKING STRAIGHT.

10:25:29 14 Q SO YOU WEREN'T THINKING STRAIGHT. BUT NOW
10:25:32 15 LOOKING AT THAT DOCUMENT, DID YOU THINK THAT
10:25:35 16 EVERYTHING IN THAT DOCUMENT, THAT YOU WERE BEING
10:25:37 17 FORTHCOMING IN THAT DOCUMENT?

10:25:38 18 A YES.

10:25:39 19 Q AND SO DO YOU STILL INTEND TO REVOKE YOUR
10:25:41 20 CITIZENSHIP?

10:25:42 21 A NO.

10:25:42 22 Q AND SO WAS THAT PARAGRAPH TRUE OR FALSE?

10:25:45 23 A FALSE.

10:25:46 24 Q AND WERE THERE OTHER PARAGRAPHS IN THAT
10:25:48 25 DOCUMENT THAT WERE ALSO FALSE?

10:25:49 1 A I'VE NOT READ THE DOCUMENT YET SO.

10:25:58 2 Q WOULD YOU WANT TO TAKE A LOOK AGAIN AT THE
10:26:01 3 DOCUMENT?

10:26:02 4 A SURE.

10:27:30 5 (PAUSE IN PROCEEDINGS.)

10:27:32 6 THE WITNESS: SOME ARE FALSE AND SOME ARE
10:27:34 7 TRUE.

10:27:34 8 BY MS. WONG:

10:27:35 9 Q SO IT'S FAIR TO SAY THAT SOME OF THE PARTS OF
10:27:37 10 THE DOCUMENT ARE FALSE?

10:27:38 11 A YES.

10:27:38 12 Q NOW, I'D LIKE YOU TO TAKE A LOOK AT
10:27:40 13 GOVERNMENT'S EXHIBIT 100 AND SEE IF YOU RECOGNIZE
10:27:48 14 THAT DOCUMENT.

10:27:49 15 A YES.

10:27:51 16 THE COURT: EXCUSE ME, COUNSEL.

10:27:52 17 MR. FONG, I'M ASSUMING THAT YOU HAVE SEEN
10:27:56 18 ALL OF THESE EXHIBITS.

10:27:57 19 MR. FONG: YES, YOUR HONOR.

10:27:57 20 THE COURT: IF YOU HAVEN'T, PLEASE SING
10:27:59 21 OUT AND LET ME KNOW SO THAT COUNSEL CAN SHOW THEM
10:28:02 22 TO YOU.

10:28:03 23 MR. FONG: I CERTAINLY WILL, YOUR HONOR.

10:28:05 24 THE COURT: THANK YOU.

10:28:06 25 BY MS. WONG:

10:28:07 1 Q WHAT IS THE GOVERNMENT'S EXHIBIT 100 THAT I
10:28:09 2 JUST SHOWED YOU, MR. FUNG?

10:28:11 3 A THIS IS THE LETTER THAT I WROTE TO I.R.S.
10:28:14 4 AGENT MR. DENNIS BROWN.

10:28:16 5 Q AND IS IT A FAIR AND ACCURATE COPY OF THE
10:28:19 6 LETTER THAT YOU WROTE?

10:28:20 7 A YES.

10:28:21 8 MS. WONG: AT THIS TIME THE GOVERNMENT
10:28:23 9 WOULD OFFER GOVERNMENT'S EXHIBIT 100 INTO EVIDENCE.

10:28:25 10 MR. FONG: NO OBJECTION.

10:28:26 11 THE COURT: IT'S RECEIVED WITHOUT
10:28:29 12 OBJECTION. EXCUSE ME.

10:28:39 13 (WHEREUPON, GOVERNMENT'S EXHIBIT NUMBER
10:28:39 14 100, HAVING BEEN PREVIOUSLY MARKED FOR
10:28:39 15 IDENTIFICATION, WAS ADMITTED INTO
10:28:40 16 EVIDENCE.)

10:28:40 17 MS. WONG:

10:28:41 18 Q AT THIS TIME COULD WE PUBLISH EXHIBIT 100.
10:28:43 19 WHO CAME UP WITH THE LANGUAGE IN THIS LETTER,
10:28:46 20 MR. FUNG?

10:28:46 21 A THE DEFENDANT.

10:28:46 22 Q AND IN GOVERNMENT'S EXHIBIT 100, WHICH YOU CAN
10:28:50 23 SEE ON THE SCREEN, IT MENTIONS HERE THAT THE --
10:28:53 24 THAT CID HAS BEEN PROVIDED INFORMATION AND
10:28:59 25 TERMINATES OR PURPORTS TO TERMINATE AGENT BROWN'S

JURISDICTION.

WHO TOLD YOU THAT YOU COULD TERMINATE THE
JURISDICTION OF AGENT BROWN?

A THE DEFENDANT.

Q AND WHAT DID YOU UNDERSTAND WHEN YOU SENT THIS
LETTER THAT IT WOULD DO?

A THAT THE I.R.S. AND DENNIS BROWN WOULD LEAVE
ME ALONE.

Q AND WAS AGENT BROWN THE ONE WHO WAS DOING YOUR
I.R.S. AUDIT?

A I DID GET AN AUDIT LETTER, YES. I THINK IT'S
DENNIS BROWN.

Q NOW, IN ADDITION TO THE -- BEFORE WE LOOKED AT
THE LETTER, WE LOOKED AT THAT DECLARATION THAT YOU
FILED AND REQUEST FOR GRAND JURIES.

DO YOU REMEMBER THAT?

DID YOU ALSO PREPARE OTHER DECLARATIONS
WITH THE HELP OF THE DEFENDANT?

A YES.

Q AND IS IT FAIR TO SAY THAT SOME OF THE
STATEMENTS IN THOSE DECLARATIONS ARE TRUE AND SOME
OF THE STATEMENTS IN THOSE DECLARATIONS ARE FALSE?

A YES.

Q NOW I'D LIKE TO MOVE ON TO AFTER THE TIME WHEN
YOU HIRED THE DEFENDANT, DID THERE COME A TIME WHEN

10:30:11 1 YOU PROVIDED THE DEFENDANT'S NAME TO SOME OF YOUR
10:30:14 2 CLIENTS WHO HAD HIRED YOU TO PREPARE TAX RETURNS?

10:30:16 3 A YES.

10:30:16 4 Q AND WERE THESE CLIENTS ALSO MEMBERS OF
10:30:21 5 NATIONAL TRUST SERVICES?

10:30:21 6 A YES.

10:30:21 7 Q NOW, THESE SAME CLIENTS, DID THEY INCLUDE
10:30:30 8 MR. JEAN-PAUL BOURDIER, DR. MORRIS BROCK?

10:30:34 9 A YES.

10:30:34 10 Q AND HOW ABOUT DR. CATHERINE HANEY?

10:30:36 11 A YES.

10:30:37 12 Q AND DR. IRWIN AND SUSAN GOOTNICK?

10:30:39 13 A YES.

10:30:40 14 Q NOW, LET'S START AND TALK A LITTLE BIT ABOUT
10:30:47 15 DR. MORRIS BROCK AND DR. CATHERINE HANEY.

10:30:50 16 HAD YOU SPOKEN TO THEM ABOUT THE I.R.S.
10:30:56 17 INVESTIGATION OF NATIONAL TRUST SERVICES?

10:30:58 18 A YES.

10:30:58 19 Q AND WHAT, IF ANYTHING, HAD YOU TOLD THEM ABOUT
10:31:01 20 THAT INVESTIGATION?

10:31:02 21 A THAT THE I.R.S. WOULD AUDIT THEIR TRUST TAX
10:31:11 22 RETURNS.

10:31:11 23 Q AND WHAT DID YOU SAY WOULD HAPPEN IF THE
10:31:16 24 I.R.S. AUDITED THEIR TRUST TAX RETURNS?

10:31:18 25 A THAT THEY WOULD AUDIT THEIR TRUST.

10:31:24 1 Q AND SO AFTER YOU TOLD DR. BROCK AND DR. HANEY
10:31:27 2 THAT THE I.R.S. WOULD AUDIT THEIR TRUST TAX
10:31:29 3 RETURNS, WHAT, IF ANYTHING, DID YOU TELL THEM ABOUT
10:31:36 4 THE DEFENDANT?

10:31:37 5 A THAT I HIRED THE DEFENDANT TO HELP ME OUT;
10:31:44 6 THAT IF THEY WANT TO HIRE THE DEFENDANT, THEY'RE
10:31:48 7 WELCOME TO.

10:31:48 8 Q AND WHEN YOU TOLD THEM THAT THEY WERE WELCOME
10:31:52 9 TO HIRE THE DEFENDANT, DID YOU HELP BY PROVIDING
10:31:56 10 ANY INFORMATION ABOUT THE DEFENDANT TO DR. BROCK
10:31:58 11 AND DR. HANEY?

10:31:59 12 A YES.

10:31:59 13 Q AND WHAT SORT OF INFORMATION DID YOU GIVE
10:32:01 14 THEM?

10:32:01 15 A THE NAME AND PHONE NUMBER.

10:32:03 16 Q AND WHAT DID YOU -- AND WHEN YOU TOLD
10:32:07 17 DR. BROCK AND DR. HANEY THAT THE DEFENDANT HAD
10:32:09 18 HELPED YOU WITH YOUR TAX PROBLEMS, DID YOU EXPLAIN
10:32:12 19 WHAT HE HAD DONE?

10:32:12 20 A YES.

10:32:13 21 Q AND WHAT DID YOU TELL THEM?

10:32:15 22 A THAT THE DEFENDANT AMENDED MY TAX RETURNS AND
10:32:23 23 SUPPLIED A WHOLE BUNCH OF DOCUMENTS.

10:32:25 24 Q AND DID YOU TELL DR. BROCK AND DR. HANEY WHAT
10:32:28 25 EFFECT THE DEFENDANT'S PLAN HAD HAD ON YOUR TAX

10:32:30 1 SITUATION?

10:32:30 2 A THAT IT WAS A WAY TO RESOLVE ALL OF THIS TRUST
10:32:43 3 RETURNS AND WHATNOT.

10:32:44 4 Q SO YOU TOLD THE DEFENDANTS IT WAS A WAY TO
10:32:47 5 SOLVE THEIR TRUST RETURNS?

10:32:51 6 A YES.

10:32:52 7 Q AND DID THERE COME A TIME WHEN YOU LEARNED
10:32:54 8 WHETHER OR NOT THE DEFENDANT HAD ACTUALLY BEEN
10:32:57 9 HIRED BY DR. BROCK AND DR. HANEY?

10:32:59 10 A YES.

10:32:59 11 Q AND HOW DID YOU LEARN THAT?

10:33:11 12 A THAT I RECEIVED A CALL FROM THE DEFENDANT TO
10:33:13 13 MAKE SURE I HAVE A CHECK OR SOME MONEY THAT I
10:33:15 14 RECEIVED BEFORE DR. BROCK AND THESE PEOPLE.

10:33:24 15 Q NOW, BEFORE YOU RECEIVED THAT PHONE CALL FROM
10:33:26 16 THE DEFENDANT, HAD YOU ALSO BEEN TALKING WITH THE
10:33:30 17 DEFENDANT OVER THE PHONE BEFORE THAT?

10:33:31 18 A YES.

10:33:32 19 Q AND YOU TALKED ABOUT SOME OF YOUR NATIONAL --
10:33:37 20 YOUR CLIENT'S FROM NATIONAL TRUST SERVICES WITH
10:33:40 21 THEM?

10:33:41 22 A YES.

10:33:41 23 Q AND DID THAT INCLUDE DR. BROCK AND DR. HANEY?

10:33:44 24 A YES.

10:33:44 25 Q NOW, THIS CHECK THAT THE DEFENDANT REFERRED

10:33:48 1 TO, DID THERE COME A TIME WHEN YOU GOT THAT CHECK?

10:33:51 2 A YES.

10:33:51 3 Q AND HOW MUCH WAS THAT CHECK FOR?

10:33:52 4 A FIFTY THOUSAND.

10:33:55 5 Q AND WHAT DID YOU DO WITH THAT CHECK?

10:33:57 6 A I REMEMBER I HELD ON TO IT, AND I TOLD THE
10:34:04 7 DEFENDANT THE MONEY IS AVAILABLE.

10:34:07 8 Q AND DID THERE COME A TIME WHEN THE DEFENDANT
10:34:09 9 ARRIVED IN SAN FRANCISCO AGAIN?

10:34:13 10 A YES.

10:34:14 11 Q AND WHERE, IF ANYWHERE, DID YOU TAKE HIM AFTER
10:34:18 12 HE ARRIVED?

10:34:19 13 A TO DR. BROCK'S RESIDENCE IN SOUTHERN
10:34:27 14 CALIFORNIA.

10:34:28 15 MS. WONG: AT THIS TIME THE GOVERNMENT IS
10:34:30 16 AT A GOOD STOPPING POINT.

10:34:32 17 THE COURT: LET'S TAKE OUR MORNING BREAK,
10:34:35 18 LADIES AND GENTLEMEN. WE'LL TAKE ABOUT 12 MINUTES.
10:34:37 19 I REMIND YOU OF THE ADMONITION.

10:46:18 20 (WHEREUPON, A RECESS WAS TAKEN.)

10:46:19 21 THE COURT: WE'RE BACK ON THE RECORD AND
10:49:46 22 THE PARTIES PREVIOUSLY PRESENT ARE PRESENT AND THE
10:49:48 23 DEFENDANT IS PRESENT AND THE OUR JURORS ARE PRESENT
10:49:50 24 AND INCLUDING THE ALTERNATES.

10:49:53 25 MR. O'REILLY: YOUR HONOR, WE APPEAR TO

10:49:54 1 BE MISSING ONE.

10:49:55 2 THE COURT: WE'RE MISSING JUROR NUMBER 3,
10:49:58 3 PARDON ME, MS. ZOU. SO WE'LL WAIT JUST A MOMENT.

10:50:37 4 (PAUSE IN PROCEEDINGS.)

10:50:38 5 THE COURT: ALL RIGHT. ALL OF OUR JURORS
10:50:40 6 ARE NOW PRESENT. AND MR. FUNG IS ON THE STAND.
10:50:45 7 YOU'RE STILL UNDER OATH.

10:50:48 8 MS. WONG, WOULD YOU LIKE TO CONTINUE?

10:50:51 9 MS. WONG: YES, YOUR HONOR.

10:50:53 10 Q NOW, MR. FUNG, BEFORE WE TALK ABOUT WHAT
10:50:55 11 HAPPENED WHEN YOU TOOK THE DEFENDANT TO THE BROCKS'
10:51:00 12 HOME IN SOUTHERN CALIFORNIA, I JUST WANT TO HAVE
10:51:03 13 YOU TAKE A LOOK FIRST AT GOVERNMENT'S EXHIBIT 212,
10:51:07 14 WHICH IS ALREADY IN EVIDENCE.

10:51:13 15 JUST GO TO THE FIRST PAGE OF THAT RETURN.

10:51:25 16 NOW, MR. FUNG, IS THIS ONE OF THE TAX
10:51:27 17 RETURNS THAT YOU PREPARED FOR THE BROCKS?

10:51:30 18 A YES.

10:51:30 19 Q AND DID YOU ALSO PREPARE THEIR N.T.S. TRUST
10:51:34 20 RETURNS?

10:51:34 21 A YES.

10:51:34 22 Q AND DID YOU RECEIVE ANY MONEY FOR PREPARING
10:51:41 23 THEIR RETURNS?

10:51:42 24 A YES.

10:51:42 25 Q AND SO YOU PREPARED THEIR 1999 TAX RETURNS.

10:51:45 1 I'D LIKE TO NOW TURN YOUR ATTENTION TO
10:51:47 2 GOVERNMENT'S EXHIBIT 216, WHICH IS ALSO ALREADY IN
10:51:51 3 EVIDENCE.

10:51:58 4 MR. FONG: I'M SORRY, 216?

10:52:04 5 MS. WONG: 216.

10:52:06 6 Q IS THIS ALSO ONE OF THE RETURNS THAT YOU
10:52:08 7 PREPARED FOR THE BROCKS?

10:52:09 8 A YES.

10:52:09 9 Q AND DID YOU ALSO RECEIVE MONEY FOR PREPARING
10:52:12 10 THIS RETURN?

10:52:12 11 A YES.

10:52:12 12 Q LET'S GO TO 217 AND GO TO THE FIFTH PAGE OF
10:52:20 13 THAT RETURN.

10:52:21 14 AND JUST BLOW UP THE TOP PART SO THAT THE
10:52:25 15 JURY CAN SEE THE NAME.

10:52:26 16 NOW, WHAT IS THE NAME OF THE TRUST THAT
10:52:31 17 IS ON THIS TAX RETURN?

10:52:33 18 A B & B TRUST.

10:52:36 19 Q AND IS THAT ONE OF THE TRUSTS THAT BELONG TO
10:52:38 20 THE BROCKS?

10:52:40 21 A YES.

10:52:40 22 Q OKAY. LET'S GO TO GOVERNMENT'S EXHIBIT 218
10:52:53 23 AND IT'S GOING TO BE PAGE 5.

10:52:55 24 AND JUST GO TO THE TOP SO THE JURY CAN
10:52:57 25 SEE THE NAME.

10:52:58 1 NOW, WHAT IS THE NAME ON THIS RETURN?

10:53:06 2 A INSIGHT COMPANY TRUST?

10:53:08 3 Q AND IS THAT ANOTHER TRUST THAT BELONGED TO THE
10:53:12 4 BROCKS?

10:53:13 5 A YES.

10:53:13 6 Q AND NOW LET'S GO TO GOVERNMENT'S EXHIBIT 219.

10:53:46 7 AND IS THIS ALSO A RETURN THAT YOU
10:53:48 8 PREPARED FOR THE BROCKS?

10:53:49 9 A YES.

10:53:49 10 Q NOW, WHEN YOU PREPARED THESE RETURNS, DID YOU
10:53:54 11 PREPARE THEM IN ACCORD WITH THE TEACHINGS OF
10:53:57 12 NATIONAL TRUST SERVICES?

10:53:59 13 A YES.

10:53:59 14 Q AND WHAT WAS THE EFFECT THAT THAT HAD HAD ON
10:54:02 15 THE BROCKS' TAXES THAT THEY OWED AND THEIR TAXABLE
10:54:06 16 INCOME THAT THEY REPORTED?

10:54:08 17 A THEY WERE LOWER OR IT WAS NOT THERE.

10:54:11 18 Q AND SO WHEN YOU TOOK THE DEFENDANT TO THE
10:54:14 19 BROCKS' HOME AND INTRODUCED HIM TO THEM, DID YOU
10:54:19 20 KNOW THAT YOU -- HAD YOU TOLD THE DEFENDANT ABOUT
10:54:22 21 THE BROCKS' TAX RETURNS?

10:54:26 22 A YES.

10:54:26 23 Q AND HAD YOU TOLD THEM -- HAD YOU TOLD THEM
10:54:29 24 SPECIFICALLY ABOUT THE TAXES THAT WERE REPORTED ON
10:54:31 25 THERE?

10:54:31 1
10:54:35 2
10:54:38 3
10:54:47 4
10:54:51 5
10:54:54 6
10:54:56 7
10:55:00 8
10:55:02 9
10:55:04 10
10:55:06 11
10:55:07 12
10:55:08 13
10:55:09 14
10:55:10 15
10:55:10 16
10:55:13 17
10:55:16 18
10:55:16 19
10:55:17 20
10:55:20 21
10:55:23 22
10:55:26 23
10:55:33 24
10:55:36 25

A YES.

Q AND WHAT DID YOU TELL THE DEFENDANT?

A THAT THEY ALSO ARE ANOTHER N.T.S. CLIENTS AND
THEY ARE USING THEIR TRUSTS AND THEY PROBABLY WOULD
DO THE SAME THING THAT THEY HELPED ME TO DO.

Q AND WHEN YOU WERE TAKING THE DEFENDANT OVER TO
THE BROCKS' HOME, WHAT HAD -- WHAT DID YOU
UNDERSTAND THAT THE DEFENDANT WAS GOING TO DO FOR
THE BROCKS?

MR. FONG: OBJECTION, SPECULATION.

BY MS. WONG:

Q IF YOU KNOW?

THE COURT: DO YOU KNOW?

THE WITNESS: NO.

BY MS. WONG:

Q HAD YOU TALKED ABOUT WHAT WAS GOING TO HAPPEN
WHEN YOU AND THE DEFENDANT GOT TO THE BROCKS'
HOUSE?

A WOULD YOU REPEAT THE QUESTION.

Q HAD YOU AND THE DEFENDANT TALKED ABOUT WHAT
WAS GOING TO HAPPEN OR WHAT YOU TWO WOULD DO WHEN
YOU GOT TO THE BROCKS' HOUSE?

A NO. I THINK WE DROVE SEPARATE CARS.

Q WHEN YOU GOT TO THE BROCKS' HOUSE, DID THE
DEFENDANT SPEAK WITH THE BROCKS?

10:55:40 1
10:55:41 2
10:55:43 3
10:55:43 4
10:55:43 5
10:55:45 6
10:55:46 7
10:55:59 8
10:56:01 9
10:56:03 10
10:56:05 11
10:56:11 12
10:56:22 13
10:56:23 14
10:56:28 15
10:56:31 16
10:56:38 17
10:56:39 18
10:56:39 19
10:56:40 20
10:56:50 21
10:56:53 22
10:56:56 23
10:56:57 24
10:56:59 25

A YES.

Q AND WERE YOU PRESENT WHEN THEY WERE SPEAKING TOGETHER?

A YES.

Q AND WHAT DID THE DEFENDANT SAY THAT HE WAS GOING TO DO, IF ANYTHING?

A THE DEFENDANT CAME UP WITH SOME TYPE OF A PLAN SCHEME TO DEAL WITH ALL OF THE ASSETS.

Q AND IN ADDITION TO DEALING WITH ALL OF THE ASSETS, WHAT, IF ANYTHING, DID THE DEFENDANT COME UP WITH, WITH REGARDS TO THE BROCKS' TAXES?

A I DON'T RECALL, BUT SOME KIND OF A PLAN TO HELP THEM DO SOMETHING.

Q I'D LIKE TO SHOW YOU NOW, MR. FUNG, WHAT HAS BEEN MARKED FOR IDENTIFICATION PURPOSES AND SHOWN TO DEFENSE COUNSEL AS GOVERNMENT'S EXHIBIT 206 AND ASK IF YOU RECOGNIZE THAT DOCUMENT?

A YES.

Q AND WHAT IS THAT DOCUMENT?

A IT IS A SCHEMATIC DIAGRAM TRYING TO UNDERSTAND WHAT THE DEFENDANT CAME UP WITH A SCHEME.

Q OKAY. AND DO YOU RECOGNIZE THAT HANDWRITING?

A YES.

Q AND WHOSE HANDWRITING IS IT?

A IT'S MINE.

10:57:00 1 Q AND WAS THAT DIAGRAM CREATED OR THAT SCHEMATIC
10:57:04 2 CREATED WHEN YOU AND THE DEFENDANT WERE AT THE
10:57:06 3 BROCKS' HOUSE?

10:57:07 4 A YES.

10:57:08 5 Q IS IT A FAIR AND ACCURATE -- DOES IT FAIRLY
10:57:14 6 AND ACCURATELY SHOW THE DOCUMENT THAT YOU CREATED
10:57:15 7 THERE?

10:57:16 8 A YES.

10:57:18 9 MS. WONG: AT THIS TIME THE GOVERNMENT
10:57:19 10 WOULD MOVE EXHIBIT 196 -- IS THAT THE NUMBER? --
10:57:24 11 206, MY APOLOGIES, 206, IN EVIDENCE.

10:57:28 12 MR. FONG: NO OBJECTION.

10:57:29 13 THE COURT: IT'S RECEIVED IN EVIDENCE.

10:57:30 14 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER 206,
10:57:30 15 HAVING BEEN PREVIOUSLY MARKED FOR
10:57:30 16 IDENTIFICATION, WAS ADMITTED INTO
10:57:31 17 EVIDENCE.)

10:57:31 18 BY MS. WONG:

10:57:31 19 Q AT THIS TIME THE GOVERNMENT WOULD ALSO ASK TO
10:57:33 20 PUBLISH EXHIBIT 206 TO THE JURY.

10:57:45 21 NOW, MR. FUNG, YOU JUST SAID THAT THIS
10:57:47 22 DIAGRAM SHOWS WHAT THE DEFENDANT PLANNED TO DO.

10:57:49 23 COULD YOU EXPLAIN THIS DIAGRAM TO THE
10:57:51 24 JURY, BEGINNING WHEREVER YOU WOULD LIKE ON THE
10:57:54 25 DIAGRAM? ACTUALLY MAYBE BEGINNING WITH HCHC.

10:57:59 1
10:58:00 2
10:58:11 3
10:58:13 4
10:58:13 5
10:58:14 6
10:58:18 7
10:58:20 8
10:58:23 9
10:58:33 10
10:58:37 11
10:58:43 12
10:58:59 13
10:59:03 14
10:59:05 15
10:59:09 16
10:59:10 17
10:59:13 18
10:59:17 19
10:59:17 20
10:59:20 21
10:59:22 22
10:59:22 23
10:59:26 24
10:59:29 25

WHAT IS THAT?

A HCHC IS HAWAIIN COLONY HOTEL CORPORATION.

Q AND DO YOU KNOW WHO THAT CORPORATION BELONGED TO?

A THE DEFENDANTS.

Q AND WHAT IS UNDERNEATH HCHC? THERE'S CORPORATE HQ AND B & B TRUST.

WHAT IS THIS DIAGRAM SHOWING THERE?

A THE DIAGRAM SHOWS THE CORPORATION IS HEADQUARTERED, HQ IS THE CORPORATE HEADQUARTER, AND THE B & B TRUST, WHICH IS THE BOX UNDER THE BOX OF TRUST WILL BE UNDER THE HAWAIIN COLONY HOTEL CORPORATION, C-O-L-O-N-Y.

Q SO WHEN YOU SAY THAT THE B & B TRUST IS GOING TO BE UNDER THE HAWAIIN COLONY HOTEL CORPORATION, WHAT DO YOU MEAN BY THAT?

A THIS IS WHAT I LISTENED TO THE DEFENDANT AND HOW HE EXPLAINED IT AND I TRIED TO PUT IN A PICTURE FORM.

Q IS IT FAIR TO SAY THAT HCHC WAS GOING TO CONTROL B & B TRUST?

A YES.

Q AND IT -- DOWN BELOW THAT THERE IS THREE DIFFERENT LINES AND NEXT TO IT SAM AND ERIC.

WHAT IS THAT SHOWING?

10:59:30 1 A THAT THE SIGNATORS ARE THE PERSONS IN CHARGE
10:59:46 2 OF THE TRUST.

10:59:46 3 Q SO WAS ONE OF THE PEOPLE WHO WAS GOING TO BE
10:59:49 4 IN CHARGE YOU?

10:59:49 5 A YES.

10:59:49 6 Q AND WHO WAS ANOTHER PERSON WHO WAS GOING TO BE
10:59:51 7 IN CHARGE?

10:59:52 8 A THE DEFENDANTS.

10:59:53 9 Q AND WHAT WOULD YOU BE ABLE TO DO BEING IN
10:59:56 10 CHARGE?

10:59:56 11 A WHATEVER NEEDED TO BE DONE.

11:00:06 12 Q AND THAT WAS WITH RESPECT TO B & B TRUST?

11:00:09 13 A YES.

11:00:09 14 Q THAT BELONGED TO THE BROCKS?

11:00:10 15 A YES.

11:00:11 16 Q NOW, WHAT IS SHOWN ON THE OTHER SIDE, THE
11:00:13 17 OTHER SIDE OF THIS DOTTED LINE?

11:00:15 18 THERE'S IN THIS BOX A CORPORATION, WCCD
11:00:18 19 CORPORATION.

11:00:18 20 DO YOU RECOGNIZE THAT?

11:00:19 21 A YES.

11:00:20 22 Q AND WHAT DOES THAT STAND FOR?

11:00:24 23 A WEST COAST CREDIT DEVELOPMENT OR SOMETHING.

11:00:46 24 Q AND WHAT WAS THAT -- AND WHO WAS THAT
11:00:48 25 CORPORATION GOING TO BELONG TO?

11:00:50 1
11:00:51 2
11:00:54 3
11:00:58 4
11:01:00 5
11:01:00 6
11:01:02 7
11:01:03 8
11:01:06 9
11:01:08 10
11:01:12 11
11:01:12 12
11:01:16 13
11:01:16 14
11:01:18 15
11:01:20 16
11:01:20 17
11:01:23 18
11:01:30 19
11:01:33 20
11:01:34 21
11:01:39 22
11:01:43 23
11:01:47 24
11:01:51 25

A THE BROCKS .

Q AND HAD THAT CORPORATION -- WAS THAT CORPORATION ALREADY IN EXISTENCE BEFORE YOU AND THE DEFENDANT ARRIVED AT THE DEFENDANT'S HOUSE?

A NO .

Q AND HOW WAS IT GOING TO COME INTO EXISTENCE?

A IT WAS GOING TO BE FORMED .

Q AND WHO WAS RECOMMENDING THAT IT BE FORMED?

A THE DEFENDANTS .

THE COURT: WHEN YOU SAY THE DEFENDANTS?

THE WITNESS: THE DEFENDANT .

THE COURT: DO YOU MEAN PLURAL

DEFENDANTS?

THE WITNESS: SINGULAR. SINGULAR .

THE COURT: OKAY. I SEE .

BY MS. WONG:

Q NOW, THERE ARE LITTLE LINES BELOW THAT WITH MORRIS BROCK AND CAT HANEY. WHO ARE THEY?

A IT'S THE DR. MORRIS BROCK AND HIS WIFE CATHERINE HANEY .

Q AND WHAT ARE THOSE LINES SHOWING BETWEEN THE CORPORATION WCCD AND DR. BROCK AND DR. HANEY?

A IT'S DR. MORRIS BROCK WILL BE THE PRESIDENT OF THE CORPORATION AND HIS WIFE CATHERINE HANEY WILL BE THE SECRETARY OF THE CORPORATION .

11:01:52 1 Q AND WHAT ARE THE LINES DRAWING BETWEEN --
11:01:54 2 ACROSS THAT DOTTED LINE FROM HCHC TO WCCD
11:01:59 3 CORPORATION SHOWING?

11:02:08 4 A SHOWING THAT THERE IS SOME TYPE OF
11:02:10 5 TRANSACTION.

11:02:10 6 Q AND DID THAT TRANSACTION INVOLVE OWNS A
11:02:15 7 2,285,000 NOTE?

11:02:16 8 A YES.

11:02:16 9 Q AND COULD YOU EXPLAIN WHAT THAT NOTE AND WHAT
11:02:21 10 THAT TRANSACTION INVOLVED?

11:02:23 11 A THAT TRANSACTION -- THE NOTE IS SECURED BY ALL
11:02:29 12 OF THE ASSETS OWNED BY B & B TRUST.

11:02:32 13 Q AND WOULD THOSE BE THE ASSETS THAT BELONG TO
11:02:34 14 DR. BROCK AND DR. HANEY?

11:02:37 15 A YES.

11:02:37 16 Q AND WHAT SORT OF ASSETS, IF YOU KNOW, DID THAT
11:02:39 17 INCLUDE?

11:02:40 18 A MONEY. A LOT OF, YOU KNOW, NOTES,
11:02:49 19 INVESTMENTS, THINGS LIKE THAT.

11:02:52 20 Q AND WHEN YOU SAY IT INCLUDED A LOT OF
11:02:57 21 INVESTMENTS, ARE YOU TALKING ABOUT STOCKS? OR
11:02:59 22 PROPERTY? REAL ESTATE? IF YOU KNOW.

11:03:04 23 A I DON'T KNOW TOO MUCH ABOUT THE PERSONAL
11:03:07 24 ASSETS, BUT I ONLY UNDERSTAND THAT HE'S A
11:03:15 25 SUCCESSFUL DOCTOR.

11:03:16 1 Q SO IS IT FAIR TO SAY THAT YOU'VE NEVER BEEN
11:03:21 2 GIVEN FINANCIAL ADVICE ABOUT DR. BROCK'S ASSETS
11:03:25 3 BEFORE THIS?

11:03:25 4 A NO.

11:03:26 5 Q AND NOW, THIS NOTE, WAS IT EQUAL TO THE VALUE
11:03:28 6 OF THE ASSETS OWNED BY B & B TRUST?

11:03:32 7 A YES.

11:03:32 8 Q AND WHO WAS TO GET THE MILLION OR THE
11:03:35 9 \$2.285 MILLION NOTE?

11:03:38 10 A THE WCCD CORPORATION CONTROLLED BY MORRIS AND
11:03:42 11 CATHERINE BROCK.

11:03:43 12 Q AND WHO WAS GOING TO CONTROL ALL OF THE ASSETS
11:03:47 13 THAT SECURED THAT NOTE?

11:03:48 14 A THE HAWAIIN -- THE HCHC, THE HAWAIIN COLONY
11:03:58 15 HOTEL CORPORATION.

11:03:59 16 Q THE DEFENDANT'S CORPORATION?

11:04:00 17 A YES.

11:04:00 18 Q NOW, DURING THAT MEETING, WERE ANY DOCUMENTS
11:04:05 19 PREPARED THAT DOCUMENTED THE TRANSACTION SHOWN ON
11:04:12 20 GOVERNMENT'S EXHIBIT 206?

11:04:15 21 A YES.

11:04:15 22 Q AND WHEN YOU DREW THIS DOCUMENT, MR. FUNG, WHO
11:04:18 23 WAS -- WHO, IF ANYONE, WAS EXPLAINING EVERYTHING
11:04:21 24 THAT YOU JUST EXPLAINED TO THE JURY?

11:04:22 25 A THE DEFENDANT.

11:04:30 1 Q NOW, IT MAY NOT BE AS OBVIOUS AS IT IS IN
11:04:32 2 FRONT OF THE JURY, BUT AS YOU CAN SEE THIS DOCUMENT
11:04:34 3 HAS BEEN TORN UP INTO FOUR DIFFERENT PIECES.

11:04:37 4 CAN YOU EXPLAIN TO THE JURY WHY IT WAS
11:04:39 5 TORN UP INTO FOUR DIFFERENT PIECES?

11:04:41 6 A I THINK AT THAT TIME THE BROCKS DIDN'T
11:04:50 7 UNDERSTAND IT AND I'M TRYING TO UNDERSTAND WHAT THE
11:04:53 8 PLAINTIFF IS EXPLAINING TO THEM IN A PICTURE FORM.

11:04:56 9 Q SO HOW DID IT TEARING IT UP INTO FOUR
11:04:59 10 DIFFERENT PIECES HELP DO THAT? OR WHAT WERE YOU
11:05:03 11 TRYING TO DO WHEN YOU TORE IT UP INTO FOUR
11:05:06 12 DIFFERENT PIECES?

11:05:06 13 A I DON'T RECALL. I THINK AFTER I FINISHED THE
11:05:12 14 EXPLANATION I JUST THROW IT AWAY.

11:05:14 15 Q NOW, LET'S TALK ABOUT SOME OF THE DOCUMENTS
11:05:19 16 THAT WERE PREPARED TO, TO BASICALLY DOCUMENT THE
11:05:23 17 TRANSACTION SHOWN ON 206.

11:05:25 18 WERE YOU PRESENT WHEN SOME OF THE
11:05:28 19 DOCUMENTS WERE PREPARED?

11:05:29 20 A YES.

11:05:35 21 Q AND DO YOU RECALL WHO PREPARED THEM?

11:05:36 22 A THE DEFENDANTS.

11:05:37 23 Q AND DO YOU RECALL WHAT HE USED TO PREPARE
11:05:39 24 THOSE DOCUMENTS?

11:05:39 25 A THE COMPUTER.

11:05:43 1 Q AND IF YOU KNOW, DID THE DEFENDANT BRING
11:05:45 2 ANYTHING WITH HIM TO THE BROCKS' HOUSE TO HELP HIM
11:05:50 3 PREPARE THESE DOCUMENTS?

11:05:51 4 A I DON'T RECALL.

11:05:52 5 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED FOR
11:05:56 6 IDENTIFICATION PURPOSES AS GOVERNMENT'S
11:06:01 7 EXHIBIT 192, 193, 194, AND 194.

11:06:09 8 SO 192 THROUGH 194. I'LL ASK YOU IF YOU
11:06:33 9 RECOGNIZE THOSE.

11:06:50 10 A YES.

11:06:50 11 Q SO LET'S BEGIN WITH GOVERNMENT'S EXHIBIT 192.

11:06:56 12 WHAT IS GOVERNMENT'S EXHIBIT 192?

11:06:57 13 A IT'S A BILL OF SALE.

11:07:02 14 Q AND WERE YOU PRESENT WHEN THAT DOCUMENT WAS
11:07:06 15 PREPARED?

11:07:07 16 A YES.

11:07:07 17 Q AND DID YOU ALSO SIGN THAT DOCUMENT?

11:07:09 18 A YES.

11:07:09 19 Q AND IS THAT A FAIR AND ACCURATE COPY OF THAT
11:07:13 20 DOCUMENT?

11:07:14 21 A YES.

11:07:19 22 MS. WONG: AT THIS TIME THE GOVERNMENT
11:07:20 23 WOULD OFFER 192 INTO EVIDENCE.

11:07:22 24 MR. FONG: NO OBJECTION, YOUR HONOR.

11:07:23 25 THE COURT: IT'S RECEIVED WITHOUT

11:07:24 1 OBJECTION.

11:07:25 2 (WHEREUPON, GOVERNMENT'S EXHIBIT NUMBER
11:07:25 3 192, HAVING BEEN PREVIOUSLY MARKED FOR
11:07:25 4 IDENTIFICATION, WAS ADMITTED INTO
11:07:33 5 EVIDENCE.)

11:07:33 6 BY MS. WONG:

11:07:33 7 Q NOW, LET'S FOCUS ON THE FIRST PARAGRAPH,
11:07:36 8 MR. FUNG, OF EXHIBIT 192. IT'S ON YOUR SCREEN.

11:07:39 9 NOW, IT SHOWS A DATE HERE OF MARCH 28TH,
11:07:42 10 2003. IS THAT THE DATE WHEN YOU, THE DEFENDANT AND
11:07:44 11 THE BROCKS, ALL MET TOGETHER IN THEIR HOME?

11:07:46 12 A YES.

11:07:46 13 Q AND WHAT DOES THIS BILL OF SALE INVOLVE
11:07:53 14 ACCORDING TO THE FIRST PARAGRAPH HERE?

11:07:56 15 A THE \$10 AND OTHER VARIOUS CONSIDERATIONS.

11:08:26 16 Q AND WHO WAS THAT BEING GIVEN BY?

11:08:28 17 A GIVEN BY THE BROCK INTO THE HCHC, WHICH IS THE
11:08:39 18 HAWAIIAN COLONY HOTEL CORPORATION.

11:08:41 19 Q AND THAT WAS THE DEFENDANT'S CORPORATION?

11:08:43 20 A YES.

11:08:43 21 Q AND THE SUPER TEACHING CORPORATION, WHICH ALSO
11:08:46 22 APPEARS IN THAT FIRST PARAGRAPH, IF YOU KNOW, WHO
11:08:48 23 DID THAT CORPORATION BELONG TO?

11:08:49 24 A THE DEFENDANTS.

11:08:58 25 Q AND IN EXCHANGE FOR THAT \$10 AND OTHER

11:09:00 1 VALUABLE CONSIDERATION, WHAT WAS GIVEN ACCORDING TO
11:09:02 2 THE SECOND PARAGRAPH?

11:09:03 3 A ALL OF THE ASSETS FOR THE B & B TRUST, INSIGHT
11:09:22 4 COMPANY TRUST, CAR TRUST.

11:09:24 5 Q AND THESE WERE TRUSTS -- WHO DID THESE TRUSTS
11:09:28 6 BELONG TO BEFORE THE BILL OF SALE?

11:09:29 7 A THE BROCKS.

11:09:30 8 Q AND IF WE GO NOW TO THE BOTTOM OF NUMBER 7 --
11:09:43 9 I DON'T KNOW IF WE CAN DISPLAY BOTH PAGES, THE NEXT
11:09:45 10 PAGE, TOO.

11:09:56 11 ACTUALLY, JUST GO TO PAGE 2. THAT'S
11:09:59 12 PROBABLY THE EASIEST.

11:10:00 13 AND JUST GO TO THE FIRST PARAGRAPH OF
11:10:02 14 THAT OR YOU CAN BLOW EVERYTHING UP IF YOU CAN.

11:10:14 15 NOW, ACCORDING TO THIS BILL OF SALE, WHO
11:10:16 16 WAS GUARANTEEING THIS TRANSACTION, MR. FUNG?

11:10:19 17 A THE DEFENDANT AND MYSELF.

11:10:21 18 Q SO WHAT DID YOU -- DID THE DEFENDANT SAY
11:10:28 19 ANYTHING TO THE BROCKS ABOUT WHAT THIS BILL OF SALE
11:10:32 20 AND THE DIAGRAM THAT WE JUST TALKED ABOUT FOR A
11:10:35 21 WHILE WOULD DO FOR THE BROCKS?

11:10:44 22 A THAT THEY WILL HAVE ALL OF THE ASSETS THAT
11:10:46 23 THEY OWN AWAY FROM THEM.

11:10:47 24 Q AND DID THE DEFENDANT EXPLAIN WHY THE BROCKS
11:10:55 25 NEEDED TO MOVE THEIR ASSETS AWAY FROM THEM?

11:10:58 1 A TO AVOID THE TAKING BY THE I.R.S.

11:11:01 2 Q SO THE TAKING OF WHAT BY THE I.R.S.?

11:11:03 3 A ALL OF THE ASSETS.

11:11:05 4 Q AND SO WHAT WAS GIVING ALL OF THESE ASSETS TO
11:11:08 5 THE CONTROL OF HAWAIIN COLONY HOTEL CORPORATION
11:11:11 6 SUPPOSED TO DO FOR THE BROCKS?

11:11:12 7 A THAT THEY DON'T LOSE ALL OF THE ASSETS.

11:11:21 8 Q NOW, DID THE DEFENDANT MAKE ANY PROMISES ABOUT
11:11:23 9 WHETHER THE BROCKS WOULD GET THEIR PROPERTY BACK AT
11:11:24 10 SOME POINT, IF YOU RECALL?

11:11:27 11 A I DON'T RECALL.

11:11:28 12 Q NOW, DID HE SAY ANYTHING ABOUT WHETHER THE
11:11:30 13 BROCKS WOULD RETAIN CONTROL AFTER THIS BILL OF SALE
11:11:34 14 WAS COMPLETED?

11:11:35 15 A THE DEFENDANT EXPLAINED THAT THE NOTE IS
11:11:51 16 TURNED AROUND AND CONTROL THE ASSETS.

11:11:53 17 Q SO LET'S TALK A LITTLE BIT ABOUT THIS NOTE.
11:11:56 18 SO YOU'RE SHOWING HERE ON THIS SECOND PAGE OF THIS
11:11:58 19 BILL OF SALE IS GUARANTEEING PERFORMANCE OF THE
11:12:01 20 SALE OF THE BROCKS' ASSETS; RIGHT?

11:12:07 21 A THAT'S RIGHT.

11:12:08 22 Q AND, NOW, DID YOU AT THAT TIME HAVE
11:12:12 23 \$2.285 MILLION OF ASSETS TO GUARANTEE THIS SALE?

11:12:15 24 A NO.

11:12:15 25 Q DO YOU KNOW IF THE DEFENDANT HAD THAT MUCH IN

ASSETS?

A I DON'T KNOW. THE DEFENDANT TOLD ME THAT HE
HAD A WHOLE BUNCH OF ASSETS.

Q AND DID THE DEFENDANT -- VERY BRIEFLY DESCRIBE
WHAT YOU REMEMBER THE DEFENDANT TELLING YOU ABOUT
HIS ASSETS?

A SOME TYPE OF AIR RIGHTS FOR DEVELOPMENT IN
HAWAII WHICH IS SUPPOSED TO BE VERY VALUABLE.

Q AND -- BUT DO YOU RECALL IF THE DEFENDANT
BROUGHT ANY SORT OF BALANCE SHEETS OR FINANCIAL
STATEMENTS TO SHOW TO THE BROCKS ABOUT HIS
FINANCIAL CONDITION OR COMPANIES?

A NO.

Q BUT DID HE TALK ABOUT THAT WITH THE BROCKS?

A NO.

Q I'D LIKE TO NOW TURN YOUR ATTENTION, MR. FUNG,
TO WHAT HAS BEEN MARKED FOR IDENTIFICATION PURPOSES
AS GOVERNMENT'S EXHIBIT 193 OR NO -- YES, 193.

DO YOU RECOGNIZE THAT DOCUMENT?

A YES.

Q AND WAS THAT DOCUMENT ALSO PREPARED DURING THE
MEETING WITH THE BROCKS?

A YES.

Q AND IS THAT THE DEFENDANT'S SIGNATURE AT THE
BOTTOM?

11:13:17 1 A YES.

11:13:23 2 MS. WONG: AT THIS TIME THE GOVERNMENT
11:13:25 3 WOULD OFFER EXHIBIT 193 INTO EVIDENCE.

11:13:27 4 MR. FONG: NO OBJECTION.

11:13:27 5 THE COURT: IT'S RECEIVED WITHOUT
11:13:29 6 OBJECTION.

11:13:29 7 (WHEREUPON, GOVERNMENT'S EXHIBIT NUMBER
11:13:29 8 193, HAVING BEEN PREVIOUSLY MARKED FOR
11:13:29 9 IDENTIFICATION, WAS ADMITTED INTO
11:13:39 10 EVIDENCE.)

11:13:39 11 BY MS. WONG:

11:13:40 12 Q NOW, THIS, WHICH IS TITLED A PROMISSORY NOTE,
11:13:45 13 WHO IS IT BETWEEN, MR. FUNG?

11:13:47 14 A IT'S BETWEEN THE HAWAIIN COLONY HOTEL
11:13:54 15 CORPORATION AND THE WEST COAST CREDIT AND
11:14:00 16 DEVELOPMENT CORPORATION.

11:14:01 17 Q NOW, THE MONEY THAT WAS SUPPOSED TO BE PAID,
11:14:04 18 IT SAYS \$15,000. COULD YOU TELL THE JURY, IF YOU
11:14:09 19 KNOW, WHAT THIS PROMISSORY NOTE IS SUPPOSED TO BE
11:14:14 20 DOING?

11:14:20 21 A THE PROMISSORY NOTE IS FOR HAWAIIN COLONY
11:14:27 22 HOTEL CORPORATION WHICH WAS OWNED BY THE DEFENDANT
11:14:29 23 TO GIVE THE BROCKS' CORPORATION THE SECURITY AS A
11:14:42 24 PROMISSORY NOTE.

11:14:42 25 Q AND WAS THIS A SECURITY RELATED TO THE ASSETS

11:14:45 1 THAT HAWAIIAN COLONY HOTEL CORPORATION WAS NOW GOING
11:14:47 2 TO BE HOLDING?

11:14:48 3 A YES.

11:14:48 4 Q AND THOSE WERE THE BROCKS' ASSETS?

11:14:51 5 A YES.

11:14:51 6 Q I'D LIKE TO TURN YOUR ATTENTION TO GOVERNMENT
11:14:54 7 EXHIBIT 194 THAT'S IN FRONT OF YOU, MR. FUNG.

11:15:04 8 DO YOU ALSO RECOGNIZE THAT EXHIBIT?

11:15:06 9 A YES.

11:15:06 10 Q AND WAS THAT EXHIBIT ALSO PREPARED DURING THAT
11:15:09 11 MEETING WITH THE BROCKS?

11:15:10 12 A YES.

11:15:10 13 Q AND IS THAT THE DEFENDANT'S SIGNATURE ON THE
11:15:13 14 EXHIBIT?

11:15:14 15 A YES.

11:15:16 16 MS. WONG: AT THIS TIME THE GOVERNMENT
11:15:17 17 OFFERS GOVERNMENT'S EXHIBIT 194 INTO EVIDENCE.

11:15:20 18 MR. FONG: NO OBJECTION, YOUR HONOR.

11:15:22 19 THE COURT: IT'S RECEIVED WITHOUT
11:15:25 20 OBJECTION.

11:15:25 21 (WHEREUPON, GOVERNMENT'S EXHIBIT NUMBER
11:15:25 22 194, HAVING BEEN PREVIOUSLY MARKED FOR
11:15:25 23 IDENTIFICATION, WAS ADMITTED INTO
11:15:25 24 EVIDENCE.)

11:15:26 25 BY MS. WONG:

11:15:26 1 Q NOW, BEFORE WE TALK ABOUT 194, I WANT TO GO
11:15:30 2 BACK TO 193. DID THE DEFENDANT EXPLAIN WHAT THIS
11:15:34 3 PROMISSORY NOTE 193 WAS GOING TO DO FOR THE BROCKS?

11:15:38 4 A I THINK HE MADE IT COMFORTABLE THAT THE
11:15:50 5 TRANSACTION WAS HAPPENING AND THAT THE NOTE IS
11:15:59 6 SECURED BY ASSETS THAT THE BROCKS HAD OWNED.

11:16:02 7 Q AND WAS THIS PART OF THE TRANSACTION THAT WAS
11:16:04 8 SUPPOSED TO PROTECT THE BROCKS'S ASSETS?

11:16:07 9 A YES.

11:16:07 10 Q FROM THE I.R.S.?

11:16:08 11 A YES.

11:16:08 12 Q LET'S GO TO EXHIBIT 194 NOW.

11:16:25 13 NOW, THIS ASSIGNMENT THAT IS SHOWING UP
11:16:28 14 HERE. LET'S FOCUS ON THE FIRST PARAGRAPH. THIS
11:16:31 15 WAS ALSO PREPARED DURING THAT MEETING?

11:16:32 16 A YES.

11:16:32 17 Q AND IS IT ALSO RELATED TO THE TRANSACTION THAT
11:16:35 18 WE HAVE BEEN TALKING ABOUT?

11:16:36 19 A YES.

11:16:37 20 Q NOW, WHAT ARE THESE -- WHEN YOU DECIDED TO
11:16:44 21 TAKE THE DEFENDANT -- OR WHEN YOU TOOK THE
11:16:45 22 DEFENDANT TO THE BROCKS' HOUSE, WHAT WAS YOUR
11:16:50 23 UNDERSTANDING OF WHAT WAS GOING TO BE GOING ON WHEN
11:16:53 24 YOU WENT TO THE BROCKS' HOUSE?

11:16:55 25 MR. FONG: OBJECTION, AMBIGUOUS,

11:16:58 1 FOUNDATION.

11:16:58 2 THE COURT: DO YOU WANT TO REPHRASE THAT?
11:17:01 3 BREAK IT DOWN IF YOU COULD.

11:17:03 4 BY MS. WONG:

11:17:04 5 Q WHEN YOU WENT TO THE BROCKS' HOUSE, WHAT DID
11:17:08 6 YOU THINK WOULD BE THE TOPIC OF DISCUSSION AT THE
11:17:10 7 BROCKS' HOUSE?

11:17:12 8 A HOW TO -- HOW THE DEFENDANT HELPED THE BROCKS
11:17:19 9 TO RESOLVE ALL OF THE TRUSTS OR THE AUDITS, THINGS
11:17:23 10 LIKE THAT.

11:17:23 11 Q SO WHEN YOU SAY THE TRUST, THE N.T.S. TRUST?

11:17:27 12 A YES.

11:17:27 13 Q AND WHEN YOU SAY THE AUDITS, ARE THOSE THE
11:17:30 14 I.R.S. AUDITS?

11:17:31 15 A YES.

11:17:32 16 Q NOW, DID YOU BELIEVE -- WERE YOU TAKING THE
11:17:36 17 DEFENDANT TO THE BROCKS SO THAT THEY COULD TALK
11:17:39 18 ABOUT REAL ESTATE?

11:17:40 19 A NO.

11:17:40 20 Q AND WHEN YOU HAD TALKED WITH DR. BROCK AND
11:17:46 21 GIVEN HIM THE DEFENDANT'S NAME, HAD YOU TALKED
11:17:48 22 ABOUT ANY SORT OF REAL ESTATE DEALS?

11:17:50 23 A NO.

11:17:50 24 Q NOW, ON THE SECOND PAGE OF THIS ASSIGNMENT, DO
11:17:59 25 YOU RECOGNIZE THE DEFENDANT'S SIGNATURE?

11:18:00 1 A YES.

11:18:01 2 Q AND WHAT WAS THIS ASSIGNMENT DOING WITH
11:18:06 3 RESPECT TO THE TRANSACTION THAT WE HAVE BEEN
11:18:09 4 TALKING ABOUT?

11:18:12 5 MR. FONG: OBJECTION, FOUNDATION.

11:18:14 6 THE COURT: OVERRULED. YOU CAN ANSWER
11:18:17 7 THAT QUESTION.

11:18:18 8 THE WITNESS: THE ASSIGNMENT IS ASSIGNED
11:18:20 9 THE PROMISSORY NOTES TO HANDLE THE ENTITY.
11:18:25 10 BY MS. WONG:

11:18:26 11 Q AND WHAT ENTITY WAS IT ASSIGNING IT TO?

11:18:33 12 A I DON'T RECALL THE FIRST PAGE OF THE DOCUMENT.

11:18:34 13 Q COULD WE GO BACK TO THE FIRST PAGE?

11:19:33 14 A I'M TRYING TO FIND THE ASSIGNEE. I THINK IT'S
11:19:42 15 THE HCHC ASSIGNED IT TO THE SUPER TEACHING
11:19:47 16 CORPORATION.

11:19:47 17 Q AND WAS THIS -- AND WHO PREPARED THIS
11:19:50 18 DOCUMENT?

11:19:50 19 A THE DEFENDANTS.

11:19:50 20 Q I'M GOING TO SHOW YOU NOW WHAT HAS BEEN MARKED
11:19:57 21 FOR IDENTIFICATION PURPOSES AS GOVERNMENT'S
11:19:59 22 EXHIBIT 3 AND ASK IF YOU RECOGNIZE THAT.

11:20:09 23 MR. FONG: IF I MAY JUST HAVE ONE MOMENT?
11:20:11 24 THANK YOU.

11:20:15 25 THANK YOU.

11:20:22 1

BY MS. WONG:

11:20:23 2

Q DO YOU RECOGNIZE THAT DOCUMENT, MR. FUNG?

11:20:24 3

A YES.

11:20:24 4

Q AND WHAT IS IT?

11:20:26 5

A IT'S THE FILING DOCUMENT TO THE STATE OF

11:20:34 6

OREGON SECRETARY OF STATE.

11:20:36 7

Q AND ARE THOSE A FAIR AND -- AND HOW DO YOU

11:20:42 8

RECOGNIZE THOSE DOCUMENTS?

11:20:43 9

A FROM THE HEADINGS.

11:20:45 10

Q AND ALSO DO YOU RECOGNIZE THE FAX NUMBER THAT

11:20:48 11

IS AT THE TOP OF THOSE DOCUMENTS?

11:20:49 12

A YES.

11:20:50 13

Q AND WHAT IS THE NUMBER -- THE FAX NUMBER?

11:20:52 14

A THE DEFENDANT'S FAX NUMBER.

11:20:57 15

Q AT THIS TIME --

11:20:59 16

A I'M SORRY. I TAKE IT BACK. IT'S MY FAX

11:21:02 17

NUMBER.

11:21:02 18

Q WERE THOSE DOCUMENTS THAT YOU RECEIVED?

11:21:04 19

A I DON'T RECALL.

11:21:17 20

Q BUT YOUR FAX NUMBER IS AT THE TOP?

11:21:19 21

A YES.

11:21:19 22

Q AND DO YOU KNOW IF THOSE DOCUMENTS WERE

11:21:22 23

ULTIMATELY FILED WITH THE SECRETARY OF STATE OF

11:21:24 24

OREGON?

11:21:25 25

A YES.

Q AND ARE THEY TRUE AND ACCURATE COPIES OF THE
ONES THAT WERE FILED WITH THE SECRETARY OF STATE?

A YES.

MS. WONG: AT THIS TIME THE GOVERNMENT
WOULD OFFER EXHIBIT 3 INTO EVIDENCE.

MR. FONG: NO OBJECTION, YOUR HONOR.

THE COURT: IT'S RECEIVED WITHOUT
OBJECTION.

(WHEREUPON, GOVERNMENT'S EXHIBIT NUMBER 3,
HAVING BEEN PREVIOUSLY MARKED FOR
IDENTIFICATION, WAS ADMITTED INTO
EVIDENCE.)

BY MS. WONG:

Q NOW, IF WE GO TO THE TOP OF THIS DOCUMENT, I
DO WANT TO BE ABLE TO GET THE DATE ON HERE. SO IF
WE FOCUS ON PAGE 1 AND GET THE DATE, AND THEN IF WE
CAN GET IT THROUGH THE REGISTERED AGENT AREA HERE.

SO WHAT IS THE DATE SHOWN ON THIS
DOCUMENT WHEN IT WAS FAXED, MR. FUNG?

A APRIL 28TH, 2003.

Q ARE YOU SURE IT'S APRIL 28TH?

A WAIT A SECOND. NO, I'M SORRY. IT'S
APRIL 8TH, 2003.

Q AND WAS THIS BEFORE OR AFTER YOU HAD THE
MEETING WITH THE BROCKS AND THE DEFENDANTS AT THEIR

11:22:37 1

HOUSE?

11:22:37 2

A AFTER.

11:22:38 3

Q AND WHAT IS THIS DOCUMENT DOING?

11:22:42 4

A REGISTERED WITH CREATING THE WEST COAST CREDIT
AND DEVELOPMENT 1, INC., CORPORATION, IN THE STATE
OF OREGON.

11:22:55 6

11:22:55 7

Q AND WHO WAS THE -- AND WHO WAS THAT
CORPORATION GOING TO BELONG TO?

11:22:58 8

11:23:00 9

A THE BROCKS.

11:23:01 10

Q AND IS THAT THE CORPORATION THAT WAS
ABBREVIATED WCCD ON THE DIAGRAM THAT WE HAVE BEEN
LOOKING AT BEFORE?

11:23:08 12

11:23:09 13

A YES.

11:23:09 14

Q NOW, HAD THIS CORPORATION EXISTED BEFORE YOU
AND THE DEFENDANT MET WITH THE BROCKS?

11:23:13 15

11:23:15 16

A NO.

11:23:15 17

Q AND WITH RESPECT TO THIS NEW CORPORATION, DID
YOU OR THE DEFENDANT DISCUSS WITH THE BROCKS
ANYTHING THAT SHOULD BE DONE WITH TAX RETURNS FOR
THE NEW CORPORATION?

11:23:22 18

11:23:24 19

11:23:34 20

A I DON'T RECALL.

11:23:35 21

11:23:36 22

Q WAS THERE ANY DISCUSSION OF FILING TAX RETURNS
FOR THIS -- FOR THE BROCKS'S NEW CORPORATION DURING
THAT MEETING?

11:23:39 23

11:23:45 24

11:23:47 25

A YES, THERE MUST BE.

11:23:47 1 Q AND WHEN YOU SAY THERE MUST BE, DO YOU RECALL
11:23:50 2 WHAT THAT CONVERSATION WAS ABOUT FILING TAX RETURNS
11:23:52 3 FOR WCCD?

11:23:54 4 A I DON'T RECALL. IT'S A NEW CORPORATION SO
11:24:00 5 THEY MAY NOT NEED TO FILE TAX RETURNS.

11:24:04 6 Q AND WAS ANYTHING GOING TO BE DONE WITH RESPECT
11:24:06 7 TO THE BROCKS'S OLD N.T.S. TAX RETURNS?

11:24:11 8 A YES.

11:24:12 9 Q AND WHAT WAS GOING TO BE DONE?

11:24:14 10 A FILE IT WITH THAT CORPORATION.

11:24:16 11 Q AND WHEN YOU SAY FILE IT WITH THAT
11:24:18 12 CORPORATION, YOU MEAN FILE A TAX RETURN?

11:24:20 13 A MY UNDERSTANDING IS DOING A SIMILAR THING THAT
11:24:24 14 THE DEFENDANT HELPED ME TO DO.

11:24:26 15 Q AND WHAT EXACTLY WAS THAT?

11:24:27 16 A IT'S TO AMEND ALL OF THE TRUST TAX RETURNS
11:24:40 17 UNDER THE CORPORATE FILING.

11:24:42 18 Q AND SO WOULD IT BE FAIR TO SAY THAT IT WOULD
11:24:44 19 REPORT EVERYTHING FOR THE BROCK TRUST UNDER THE NEW
11:24:50 20 CORPORATION?

11:24:51 21 A YES.

11:24:51 22 Q NOW, DURING THAT MEETING WITH THE BROCKS, DID
11:24:58 23 THE DEFENDANT DISCUSS GRAND JURIES?

11:24:59 24 A I DON'T RECALL.

11:25:00 25 Q NOW, AT THE END OF THE MEETING, I'M GOING TO

11:25:07 1 SHOW YOU WHAT HAS BEEN MARKED FOR IDENTIFICATION
11:25:10 2 PURPOSES AS GOVERNMENT'S EXHIBIT 208.

11:25:26 3 THE COURT: THAT'S BEING SHOWN TO DEFENSE
11:25:28 4 COUNSEL NOW.

11:25:28 5 MR. FONG: THAT'S 208.

11:25:30 6 MS. WONG: THAT'S 208.

11:25:31 7 MR. FONG: THANK YOU.

11:25:32 8 MS. WONG: AND I'M SPECIFICALLY ONLY
11:25:34 9 GIVING HIM THE FIRST PAGE OF THAT EXHIBIT.

11:25:38 10 Q MR. FUNG, DO YOU RECOGNIZE WHAT HAS BEEN
11:25:42 11 MARKED FOR IDENTIFICATION AS EXHIBIT 208?

11:25:45 12 A YES.

11:25:46 13 Q AND WHAT IS THAT EXHIBIT?

11:25:46 14 A IT'S A HANDWRITTEN NOTES BY ME.

11:25:49 15 Q AND WHO DID YOU GIVE THAT TO?

11:25:51 16 A THE BROCKS.

11:25:52 17 Q AND WHEN DID YOU GIVE THEM THAT NOTE?

11:25:54 18 A WHEN THEY WERE BEING CONTACTED BY THE I.R.S.

11:26:02 19 Q AND IS IT A FAIR AND ACCURATE COPY OR IS IT --
11:26:08 20 IS THAT THE NOTE THAT YOU GAVE THEM?

11:26:09 21 A YES.

11:26:09 22 Q AND IS IT IN THE SAME OR SIMILAR CONDITION AS
11:26:13 23 WHEN YOU GAVE THEM THE NOTE, OTHER THAN THE
11:26:15 24 GOVERNMENT STICKER?

11:26:16 25 A YES.

11:26:18 1 MS. WONG: AT THIS TIME THE GOVERNMENT
11:26:19 2 WOULD OFFER THE FIRST PAGE OF GOVERNMENT'S
11:26:22 3 EXHIBIT 208 INTO EVIDENCE.

11:26:23 4 MR. FONG: NO OBJECTION, YOUR HONOR.

11:26:24 5 THE COURT: ARE THEY MARKED PAGES?

11:26:26 6 MS. WONG: NOT ON THE ORIGINALS BUT THERE
11:26:28 7 WAS AN ATTACHMENT TO THE EXHIBIT THAT WE'RE NOT
11:26:31 8 OFFERED INTO EVIDENCE.

11:26:32 9 MR. O'REILLY: MAY I APPROACH FOR A
11:26:34 10 SECOND?

11:26:34 11 THE COURT: YES.

11:26:36 12 (DISCUSSION AMONGST COUNSEL OFF THE
11:26:38 13 RECORD.)

11:26:47 14 MR. FONG: MAY I TAKE A QUICK LOOK AT THE
11:26:50 15 ATTACHMENT?

11:26:52 16 THAT'S FINE.

11:26:53 17 MS. WONG: GOVERNMENT'S EXHIBIT 208 WILL
11:26:56 18 BE WHAT MR. FUNG HAS.

11:26:58 19 THE COURT: ANY OBJECTION TO 208 COMING
11:27:01 20 IN?

11:27:01 21 MR. FONG: NO OBJECTION.

11:27:05 22 THE COURT: IT'S RECEIVED WITHOUT
11:27:07 23 OBJECTION.

11:27:08 24 (WHEREUPON, GOVERNMENT'S EXHIBIT NUMBER
11:27:08 25 208, HAVING BEEN PREVIOUSLY MARKED FOR

11:27:08 1 IDENTIFICATION, WAS ADMITTED INTO
11:27:08 2 EVIDENCE.)

11:27:08 3 BY MS. WONG:

11:27:09 4 Q AND IF WE CAN BLOW UP EXHIBIT 208. "NOW, I
11:27:38 5 WOULD LOVE TO COOPERATE WITH YOU. PLEASE PUT YOUR
11:27:41 6 QUESTIONS OR INQUIRIES IN WRITING."

11:27:43 7 MR. FUNG, WHERE DID YOU GET THAT
11:27:45 8 PARTICULAR LANGUAGE FROM?

11:27:46 9 A IT'S TAUGHT BY RICK PRESCOTT OR ROY FRITTS OF
11:27:53 10 NATIONAL TRUST SERVICES.

11:27:54 11 Q AND "I STAND ON THE RECORD. THE DOCUMENT
11:27:58 12 SPEAKS FOR ITSELF."

11:28:00 13 WHERE DID THAT PARTICULAR LANGUAGE COME
11:28:02 14 FROM?

11:28:02 15 A NATIONAL TRUST SERVICES.

11:28:03 16 Q AND WHY DID YOU GIVE THIS PARTICULAR NOTE CARD
11:28:06 17 TO THE BROCKS?

11:28:07 18 A SO DR. BROCK WILL REMEMBER WHAT THEY LEARNED
11:28:14 19 THROUGH THE N.T.S., YOU KNOW, TEACHINGS.

11:28:17 20 Q AND WAS THIS -- AND WAS THE PURPOSE OF THIS --
11:28:21 21 AND WHAT WAS THIS DESIGNED TO DO WITH RESPECT TO
11:28:24 22 THE BROCKS' TAX PROBLEMS?

11:28:32 23 MR. FONG: I'M SORRY, YOUR HONOR. A
11:28:35 24 BELATED OBJECTION UNLESS THE QUESTION IS DIRECTED
11:28:37 25 TO MR. FUNG'S INTENT.

11:28:39 1 MS. WONG: YES. WHAT DID YOU INTEND --

11:28:41 2 THE COURT: YOU'LL WITHDRAW.

11:28:42 3 MS. WONG: YEAH, I'LL WITHDRAW.

11:28:45 4 Q MR. FUNG, WHAT DID YOU INTEND THIS DOCUMENT TO
11:28:47 5 DO FOR THE BROCKS WITH RESPECT TO THEIR I.R.S. TAX
11:28:51 6 PROBLEMS.

11:28:59 7 A THAT THE BROCKS NOT GOING TO SPEAK TO THE
11:29:06 8 I.R.S. VERBALLY AND FREELY.

11:29:08 9 Q MR. FUNG, I'M GOING TO SHOW YOU WHAT HAS BEEN
11:29:31 10 MARKED FOR IDENTIFICATION PURPOSES AS GOVERNMENT'S
11:29:35 11 EXHIBIT 197 AND 200.

11:29:36 12 LET'S BEGIN WITH 197.

11:29:40 13 DO YOU RECOGNIZE THE SIGNATURE ON THAT
11:29:43 14 DOCUMENT?

11:29:44 15 A YES.

11:29:45 16 Q AND WHOSE SIGNATURE IS IT?

11:29:49 17 A THE DEFENDANT'S.

11:29:52 18 MS. WONG: AT THIS TIME THE GOVERNMENT
11:29:53 19 WOULD OFFER GOVERNMENT'S EXHIBIT 197 INTO EVIDENCE.

11:29:55 20 MR. FONG: YOUR HONOR, MAY I JUST HAVE A
11:29:57 21 MOMENT?

11:29:57 22 THE COURT: SURE.

11:30:11 23 MR. FONG: I'M SORRY, THAT'S 1?

11:30:13 24 MS. WONG: 197.

11:30:15 25 MR. FONG: THANK YOU.

11:30:30 1 THE COURT: ANY OBJECTION?

11:30:31 2 MR. FONG: I'M SORRY.

11:30:33 3 THE COURT: ANY OBJECTION?

11:30:33 4 MR. FONG: I FORGOT. NO OBJECTION TO 197

11:30:36 5 COMING INTO EVIDENCE.

11:30:37 6 THE COURT: ALL RIGHT. THANK YOU. IT'S

11:30:38 7 ADMITTED WITHOUT OBJECTION.

11:30:40 8 (WHEREUPON, GOVERNMENT'S EXHIBIT NUMBER

11:30:40 9 197, HAVING BEEN PREVIOUSLY MARKED FOR

11:30:40 10 IDENTIFICATION, WAS ADMITTED INTO

11:30:41 11 EVIDENCE.)

11:30:41 12 MS. WONG: MAY WE PUBLISH EXHIBIT 197?

11:30:46 13 THE COURT: I THINK IT'S BEING PUBLISHED

11:30:48 14 NOW.

11:30:57 15 BY MS. WONG:

11:30:57 16 Q NOW, MR. FUNG, IF YOU KNOW, WHAT DOES THIS

11:31:01 17 DOCUMENT RELATE TO?

11:31:01 18 A CONFIRMATION AND CLARIFICATION OF THE

11:31:04 19 ASSIGNMENT.

11:31:04 20 Q AND WHEN IT SAYS CLARIFICATION OF THE

11:31:06 21 ASSIGNMENT, IS THIS THE SAME TRANSACTION BETWEEN

11:31:09 22 THE DEFENDANT'S CORPORATION AND THE BROCKS THAT WE

11:31:11 23 HAVE BEEN TALKING ABOUT?

11:31:12 24 A YES.

11:31:12 25 Q I'D LIKE YOU TO TAKE A LOOK AT GOVERNMENT'S

11:31:18 1 EXHIBIT 200. THAT'S GOING TO BE IN FRONT OF YOU IN
11:31:21 2 THE -- DO YOU RECOGNIZE THE SIGNATURE ON THAT
11:31:26 3 DOCUMENT?

11:31:26 4 A YES.

11:31:26 5 Q AND WHOSE SIGNATURE IS IT?

11:31:28 6 A THE DEFENDANT'S.

11:31:30 7 MR. WONG: AT THIS TIME THE GOVERNMENT
11:31:31 8 WOULD OFFER GOVERNMENT'S EXHIBIT 200 INTO EVIDENCE?

11:31:34 9 MR. FONG: NO OBJECTION.

11:31:35 10 THE COURT: IT'S RECEIVED WITHOUT
11:31:36 11 OBJECTION.

11:31:37 12 (WHEREUPON, GOVERNMENT'S EXHIBIT NUMBER
11:31:37 13 200, HAVING BEEN PREVIOUSLY MARKED FOR
11:31:37 14 IDENTIFICATION, WAS ADMITTED INTO
11:31:51 15 EVIDENCE.)

11:31:51 16 BY MS. WONG:

11:31:51 17 Q NOW, THIS LETTER -- WHO IS THIS LETTER FROM,
11:31:53 18 MR. FUNG?

11:31:55 19 A THE DEFENDANTS.

11:31:56 20 Q AND APRIL 7TH, 2003. IS THIS AFTER YOUR
11:31:59 21 MEETING WITH THE BROCKS AND THE DEFENDANT?

11:32:02 22 A YES.

11:32:02 23 Q AND LET'S GO TO THE FIRST PARAGRAPH OF THIS
11:32:06 24 LETTER. AND IT'S TALKING ABOUT THE NOTE.

11:32:11 25 AND IT MENTIONS THAT YOU'RE

11:32:13 1 ACCOMPLISHING -- YOU'RE ACCOMPLISHING THE FEAT NOW
11:32:18 2 OF SECURING THE ASSETS.

11:32:20 3 WHAT IS BEING TALKED ABOUT IN THIS FIRST
11:32:23 4 PARAGRAPH HERE? OR WHAT IS THE DEFENDANT REFERRING
11:32:36 5 TO, RATHER?

11:32:37 6 A THAT'S AN ESTIMATE OF 50,000 TAX LIABILITY
11:32:51 7 WITH THE HAWAIIN COLONY HOTEL CORPORATION.

11:32:57 8 Q SO WAS THE HAWAIIN COLONY HOTEL CORPORATION
11:33:00 9 GOING TO ASSUME RESPONSIBILITY FOR THE TAX
11:33:02 10 LIABILITY UNDER THE TRANSACTION?

11:33:04 11 A I WOULD THINK SO.

11:33:14 12 Q NOW, HAD THERE ACTUALLY BEEN ANY INTERNAL
11:33:17 13 AUDIT DONE AS FAR AS YOU'RE AWARE OF THE BROCKS
11:33:20 14 ASSETS OR TRUST?

11:33:21 15 A NO.

11:33:21 16 Q DID YOU -- WERE YOU GOING TO BE DOING AN
11:33:25 17 AUDIT?

11:33:26 18 A NO.

11:33:26 19 Q AND TO YOUR KNOWLEDGE HAD THE DEFENDANT TALKED
11:33:28 20 TO YOU ABOUT DOING ANY SORT OF INTERNAL AUDIT?

11:33:30 21 A NO.

11:33:31 22 Q NOW, WERE YOU ACTUALLY -- IT SAYS HERE THAT
11:33:34 23 YOU WORK FOR HAWAIIN COLONY HOTEL CORPORATION. DID
11:33:39 24 YOU -- WERE YOU ACTUALLY EMPLOYED BY THAT
11:33:41 25 CORPORATION?

11:33:41 1

A NO.

11:33:42 2

Q AND HAD YOU EVER GONE TO HAWAII TO WORK FOR
THE DEFENDANT?

11:33:46 3

11:33:46 4

A NO.

11:33:47 5

Q NOW, LET'S GO TO THE SECOND PAGE OF THIS
PARTICULAR DOCUMENT AND BLOW UP SOME THERE.

11:33:50 6

11:34:04 7

DURING YOUR MEETING WITH THE BROCKS AND
THE DEFENDANT, DID THE DEFENDANT TALK ABOUT
PREPARING DOCUMENTS LIKE THIS LETTER OR ANY OTHER
DOCUMENTS TO HELP THEM WITH THE I.R.S. OR TO
DEFLECT ATTACK?

11:34:17 11

11:34:22 12

A YES.

11:34:22 13

Q AND WHAT DID HE SAY?

11:34:24 14

A BASED ON THIS THAT THE DEFENDANT ASKED HIM TO
BLOCK OR TO DIRECT ALL INQUIRIES OF THE I.R.S. TO
THE DEFENDANT.

11:34:29 15

11:34:32 16

11:34:33 17

Q AND HAD THAT ALSO BEEN DISCUSSED DURING YOUR
MARCH 28TH, 2003 MEETING?

11:34:35 18

11:34:40 19

A YES.

11:34:40 20

Q MR. FUNG, I'M GOING TO SHOW YOU WHAT HAS BEEN
MARKED AS GOVERNMENT'S EXHIBIT 31. DO YOU
RECOGNIZE THE SIGNATURE ON THAT DOCUMENT?

11:34:56 21

11:35:01 22

11:35:03 23

A YES.

11:35:03 24

Q AND WHOSE SIGNATURE IS IT?

11:35:05 25

A THE DEFENDANT.

11:35:08 1 MS. WONG: AT THIS TIME THE GOVERNMENT
11:35:10 2 WOULD OFFER GOVERNMENT'S EXHIBIT 31 INTO EVIDENCE.

11:35:11 3 MR. FONG: YOUR HONOR, ONE MOMENT,
11:35:13 4 PLEASE.

11:35:26 5 (PAUSE IN PROCEEDINGS.)

11:35:27 6 MR. FONG: YOUR HONOR, OBJECTION. LACK
11:35:28 7 OF FOUNDATION.

11:35:29 8 MS. WONG: MAY WE BE SEEN OVER AT
11:35:31 9 SIDE-BAR?

11:35:32 10 THE COURT: OKAY. LET'S HAVE A
11:35:33 11 CONFERENCE THERE. FOLKS, YOU CAN STAND UP IF YOU
11:35:36 12 WISH.

11:35:37 13 (SIDE-BAR CONFERENCE ON THE RECORD.)

11:37:57 14 THE COURT: WE'RE AT THE SIDE-BAR AND
11:37:57 15 OUTSIDE OF THE PRESENCE OF THE JURY. COUNSEL ARE
11:37:57 16 PRESENT.

11:37:57 17 MR. FUNG.

11:37:57 18 MR. FONG: WELL, HASN'T THERE BEEN ANY
11:37:57 19 FOUNDATION THAT MR. FUNG WAS SAW MR. LIGHTER SIGN
11:37:57 20 THIS?

11:37:57 21 THE COURT: I DIDN'T HEAR ANY FOUNDATION.
11:37:57 22 HE SAID HE RECOGNIZED THE SIGNATURE AND THAT'S ALL.

11:37:57 23 MR. FONG: RIGHT.

11:37:57 24 MR. O'REILLY: AND JUST FOR
11:37:57 25 CLARIFICATION, I THINK A BETTER FOUNDATION NEEDS TO

11:37:57 1 BE LAID, BUT HE DOESN'T EVEN HAVE TO. AS LONG AS
11:37:58 2 HE CAN AUTHENTICATE SOME OF THE INFORMATION IN
11:37:58 3 THERE AND RECOGNIZE THE SIGNATURE, THAT WILL BE
11:37:58 4 ENOUGH.

11:37:58 5 MR. FONG: WELL, I MEAN, HAS HE EVER EVEN
11:37:58 6 SEEN THIS DOCUMENT BEFORE?

11:37:58 7 THE COURT: THIS WITNESS?

11:37:58 8 MR. FONG: YEAH.

11:37:58 9 THE COURT: NO, I AGREE THERE'S A LACK OF
11:37:58 10 FOUNDATION RIGHT NOW.

11:37:58 11 MR. FONG: YEAH.

11:37:58 12 MS. WONG: WE'RE CONTENDING -- THE
11:37:58 13 GOVERNMENT'S ARGUMENT IS THAT IT'S AN ADMISSION OF
11:37:58 14 A PARTY DEPONENT AND THE DEFENDANT SIGNED IT AND
11:37:58 15 WHAT WAS IN IT, AND WE CAN LAY A FOUNDATION TO SHOW
11:37:58 16 THAT HE'S FAMILIAR WITH WHAT IS DISCUSSED IN THERE
11:37:58 17 AND HE'S FAMILIAR WITH HIS SIGNATURE BECAUSE HE HAS
11:37:58 18 SEEN DOCUMENTS.

11:37:58 19 THE COURT: THAT'S THE FOUNDATION THAT
11:37:58 20 HAS TO BE LAID.

11:37:58 21 MR. FONG: YES.

11:37:58 22 THE COURT: LET ME ALSO ASK, IF YOU KNOW
11:37:58 23 OF OTHER EXHIBITS YOU'RE GOING TO BE USING, IF YOU
11:37:58 24 COULD JUST GIVE IT TO JERRY SO HE'LL HAVE THE
11:37:58 25 PROPER BINDERS IN FRONT OF HIM.

11:37:58 1 MS. WONG: OKAY. SORRY.

11:37:58 2 MR. FONG: NO, NO. IT'S JUST -- THERE
11:37:58 3 ARE SO MANY AND IT'S BEEN DIFFICULT.

11:37:58 4 THE COURT: YEAH. OKAY.

11:37:58 5 (SIDE-BAR CONFERENCE CONCLUDED.)

11:37:58 6 THE COURT: I'LL SUSTAIN THE OBJECTION AT
11:37:59 7 THIS TIME.

11:38:00 8 BY MS. WONG:

11:38:00 9 Q MR. FUNG, DO YOU RECOGNIZE WHAT IS DESCRIBED
11:38:02 10 HERE IN GOVERNMENT'S EXHIBIT 31, THE ENTITIES?

11:38:08 11 A YES.

11:38:09 12 Q AND HAD YOU DISCUSSED THE SUBSTANCE OF WHAT IS
11:38:14 13 SUMMARIZED AND MEMORIALIZED HERE IN EXHIBIT 31 WITH
11:38:17 14 THE DEFENDANT?

11:38:18 15 A NO.

11:38:18 16 Q BUT HAVE YOU SEEN THE DEFENDANT SIGN DOCUMENTS
11:38:23 17 BEFORE?

11:38:23 18 A YES.

11:38:23 19 Q AND ARE YOU FAMILIAR WITH HIS SIGNATURE?

11:38:26 20 A YES.

11:38:37 21 MS. WONG: NOW, AT THIS TIME THE
11:38:39 22 GOVERNMENT WOULD OFFER INTO EVIDENCE EXHIBIT 31.

11:38:43 23 MR. FONG: SAME OBJECTION, YOUR HONOR.

11:38:45 24 THE COURT: I'LL SUSTAIN THE OBJECTION.

11:38:47 25 BY MS. WONG:

11:38:47 1 Q NOW, AFTER YOU HAD THE MEETING WITH THE
11:38:50 2 BROCKS, DID YOU AND THE DEFENDANT TALK ABOUT WHAT
11:38:51 3 ELSE NEEDED TO BE DONE, IF ANYTHING, WITH REGARD TO
11:38:55 4 THE TRANSACTION?

11:39:01 5 A NO, I LEFT THE MEETING EARLY.

11:39:02 6 Q BUT AFTER THE MEETING, DID YOU SPEAK WITH THE
11:39:05 7 DEFENDANT ANY FURTHER ON THE PHONE?

11:39:06 8 A YES.

11:39:06 9 Q AND WHAT DID YOU DISCUSS WITH THE DEFENDANT?

11:39:10 10 A THE DEFENDANT ASKED ME TO -- INFORM ME THAT
11:39:20 11 THE BROCKS HAD CHANGED THEIR MIND.

11:39:21 12 Q AND THE BROCKS CHANGED THEIR MIND? WHAT DO
11:39:24 13 YOU MEAN? DID THE DEFENDANT EXPLAIN WHAT HE MEANT
11:39:26 14 BY THAT?

11:39:26 15 A THE DEFENDANT TOLD ME THAT THE BROCKS WERE NOT
11:39:29 16 GOING TO MOVE FORWARD WITH THE TRANSACTION.

11:39:32 17 Q NOW, DID THE -- DID YOU RECEIVE ANY
11:39:39 18 COMMUNICATIONS FROM THE BROCKS AFTER YOU HEARD THAT
11:39:42 19 THEY WEREN'T GOING TO GO THROUGH WITH THE
11:39:44 20 TRANSACTION?

11:39:45 21 A YES.

11:39:50 22 Q AND DO YOU RECALL WHAT SORT OF COMMUNICATIONS
11:39:52 23 YOU RECEIVED?

11:39:53 24 A HE CALLED ME.

11:40:06 25 Q AND DO YOU RECALL WHAT, IF ANYTHING, YOU WERE

11:40:08 1 ASKED TO DO DURING THE PHONE CALL?

11:40:10 2 A I THINK HE CALLED AND LEFT A MESSAGE SAYING
11:40:20 3 THAT HE WANTED ALL OF THE DOCUMENTS BACK.

11:40:21 4 Q NOW, WHO HAD THE DOCUMENTS AT THIS POINT?

11:40:23 5 A THE DEFENDANTS.

11:40:24 6 Q AND HAD THE DEFENDANT -- AND HOW DID THE
11:40:29 7 DEFENDANT OBTAIN ALL OF THOSE DOCUMENTS FROM THE
11:40:30 8 BROCKS?

11:40:34 9 MR. FONG: OBJECTION, FOUNDATION.

11:40:36 10 BY MS. WONG:

11:40:37 11 Q IF YOU KNOW?

11:40:38 12 MR. FONG: HEARSAY.

11:40:39 13 THE COURT: I'LL SUSTAIN THE OBJECTION.
11:40:41 14 YOU CAN ASK THE QUESTION.

11:40:44 15 BY MS. WONG:

11:40:45 16 Q IF YOU KNOW, HOW DID THE DEFENDANT OBTAIN THE
11:40:47 17 DOCUMENTS FROM THE BROCKS?

11:40:48 18 A I DON'T KNOW.

11:40:49 19 Q NOW --

11:40:51 20 MR. FONG: EXCUSE ME, YOUR HONOR. IN
11:40:53 21 LIGHT OF THAT ANSWER, I WOULD MOVE TO STRIKE THE
11:40:55 22 PRIOR ANSWER BECAUSE IT IS QUITE CLEAR THAT
11:40:59 23 MR. FUNG DID NOT -- DOES NOT HAVE --

11:41:02 24 THE COURT: WHICH PRIOR ANSWER?

11:41:03 25 MR. FONG: WHICH WAS THAT MR. LIGHTER HAD

11:41:05 1 THE RECORDS BECAUSE IT SOUNDS LIKE MR. FUNG MIGHT
11:41:13 2 HAVE BEEN ASSUMING.

11:41:17 3 THE COURT: I'M GOING TO OVERRULE THAT AT
11:41:19 4 THIS POINT. YOU CAN ASK YOUR NEXT QUESTION.

11:41:26 5 BY MS. WONG:

11:41:26 6 Q AT SOME POINT DID YOU MEET WITH THE DEFENDANT?

11:41:28 7 A YES.

11:41:28 8 Q AND WHAT DID YOU OBTAIN FROM THE DEFENDANT
11:41:30 9 DURING THAT MEETING?

11:41:31 10 A BOXES OF THE BROCKS' RECORDS AND TRUST AND
11:41:43 11 FINANCIAL RECORDS.

11:41:47 12 MS. WONG: I'M GOING TO SHOW TO DEFENSE
11:41:48 13 COUNSEL THE NEXT TWO EXHIBITS THAT I'M GOING TO BE
11:41:50 14 ADMITTING.

11:42:12 15 THEY'RE GOVERNMENT'S EXHIBIT 4 AND 33.

11:43:12 16 Q NOW, BEFORE YOU MET WITH THE DEFENDANT AND
11:43:19 17 OBTAINED THE BROCKS' RECORDS, DID YOU RECEIVE --
11:43:25 18 I'D LIKE YOU TO TAKE A LOOK AT GOVERNMENT'S
11:43:27 19 EXHIBIT 33.

11:43:36 20 DO YOU RECOGNIZE THE FAX NUMBER AT THE
11:43:37 21 TOP OF THAT DOCUMENT?

11:43:38 22 A NO, EXCEPT THE AREA CODE SHOWS THAT THIS SANTA
11:44:00 23 ROSA COUNTY, MARIN COUNTY.

11:44:05 24 Q AND, NOW, DO YOU RECALL -- DO YOU OTHERWISE
11:44:13 25 RECOGNIZE THAT DOCUMENT?

11:44:14 1 A I DON'T RECALL THAT I CAN SEE IT RIGHT NOW.

11:44:41 2 Q SO YOU NEVER RECEIVED THAT DOCUMENT?

11:44:43 3 A I DON'T RECALL, BUT I THINK I DID.

11:44:48 4 Q OKAY. YOU THINK YOU DID?

11:44:50 5 A YES.

11:44:50 6 Q DID YOU EVER HAVE ANY DISCUSSIONS WITH THE
11:44:56 7 DEFENDANT ABOUT WHAT SHOULD BE DONE NOW THAT THE
11:44:58 8 BROCKS DIDN'T WANT TO GO THROUGH WITH THE DEAL?

11:45:01 9 A YES.

11:45:01 10 Q AND WHAT DID YOU AND THE DEFENDANT DISCUSS?

11:45:03 11 A THE DEFENDANT TOLD ME THAT I MUST TAKE THOSE
11:45:07 12 BOXES TO THE I.R.S.

11:45:12 13 Q AND WHERE WERE YOU SUPPOSED TO TAKE THOSE
11:45:14 14 BOXES TO?

11:45:15 15 A TO ANY I.R.S. CID OFFICE.

11:45:18 16 Q AND DID THE DEFENDANT TELL YOU WHY YOU HAD TO
11:45:21 17 REPORT THE BROCKS FOR A TAX CRIME?

11:45:31 18 A THAT WE HAVE KNOWLEDGE ON THAT AND WE MUST DO
11:45:33 19 IT AT THAT TIME.

11:45:34 20 Q NOW, MR. FUNG, JUST TO GO BACK FOR A MOMENT,
11:45:37 21 WHAT WAS THE PURPOSE OF YOU, AS YOU UNDERSTOOD IT,
11:45:39 22 THE PURPOSE OF YOU AND THE DEFENDANT GOING TO THE
11:45:42 23 BROCKS'S HOUSE FOR THAT MARCH 23, 2003 MEETING?

11:45:48 24 MR. FONG: OBJECTION.

11:45:48 25 THE COURT: OVERRULED. YOU CAN ANSWER

11:45:52 1 THE QUESTION.

11:45:53 2 THE WITNESS: CAN YOU REPEAT THE
11:45:54 3 QUESTION?

11:45:55 4 BY MS. WONG:

11:45:55 5 Q NOW, WHAT DID YOU UNDERSTAND THE PURPOSE OF
11:45:57 6 YOU GOING TO THE BROCKS HOUSE ON MARCH 23, 2003 TO
11:46:02 7 MEET WITH THE DEFENDANT.

11:46:08 8 A MY UNDERSTANDING IS TO INTRODUCE THE DEFENDANT
11:46:10 9 TO THE BROCKS AND HELP THEM, HELP THEM WITH
11:46:21 10 ANYTHING THEY NEEDED ME TO HELP BECAUSE THEY TOLD
11:46:25 11 ME HE LIVED IN HAWAII BECAUSE AFTER I'M GONE THEY
11:46:28 12 NEED TO HELP WHATEVER THEY NEEDED TO.

11:46:30 13 Q AND HE SAID YOU'RE GOING TO HELP THEM WITH
11:46:33 14 WHATEVER THEY NEEDED YOU TO DO. IS THAT WITH
11:46:35 15 RESPECT TO THE TRANSACTION WITH THE BROCKS?

11:46:37 16 A YES.

11:46:38 17 Q AND WHAT WERE YOU AND THE DEFENDANT, AS YOU
11:46:40 18 UNDERSTAND IT, HELPING THE BROCKS WITH THE
11:46:43 19 PROBLEMS?

11:46:44 20 A THE NATIONAL TRUST SERVICES AND ALL OF THE TAX
11:46:47 21 RETURNS.

11:46:52 22 Q BUT THEN THE DEFENDANT TOLD YOU TO TAKE ALL OF
11:46:55 23 THE BROCKS RECORDS TO THE I.R.S. AND REPORT THEM
11:46:58 24 FOR TAX CRIMES.

11:47:00 25 WHAT WAS YOUR UNDERSTANDING AS TO WHY YOU

11:47:02 1 WERE SUPPOSED TO DO THAT?

11:47:03 2 A THAT THEY WERE USING US TO LOWER THEIR TAXES.

11:47:08 3 Q AND DID YOU, IN FACT, GO TO AN OFFICE OF
11:47:15 4 I.R.S. CID WITH THE BROCKS TAX RETURN RECORDS?

11:47:22 5 A YES.

11:47:22 6 Q AND WHAT OFFICE DID YOU GO TO?

11:47:24 7 A THE OFFICE IN REDDING, CALIFORNIA.

11:47:26 8 Q HOW DID YOU GET THE ADDRESS FOR THE I.R.S.
11:47:29 9 OFFICE IN REDDING, CALIFORNIA?

11:47:31 10 A I DON'T RECALL.

11:47:35 11 Q AND WHEN YOU GOT TO THAT OFFICE, DID YOU SPEAK
11:47:37 12 WITH ANY OF THE SPECIAL AGENTS FROM THE I.R.S.
11:47:39 13 THERE?

11:47:40 14 A YES.

11:47:40 15 Q AND WHAT DID YOU TELL THEM?

11:47:41 16 A THAT I WAS TURNING IN ALL OF THESE BOXES OF
11:47:49 17 TRUST DOCUMENTS AND RECORDS AND IT BELONGS TO THE
11:47:52 18 BROCKS.

11:47:53 19 Q AND BEFORE YOU HAD ARRIVED AT THAT OFFICE, HAD
11:47:56 20 THE DEFENDANT AND YOU TALKED ABOUT WHAT SHOULD BE
11:48:00 21 SAID TO THE I.R.S. CID THERE?

11:48:02 22 A YES. I WAS TOLD BY THE DEFENDANT WHAT TO SAY,
11:48:08 23 YEAH.

11:48:08 24 Q AND DID YOU, IN FACT, GIVE THEM THE BROCKS'
11:48:12 25 RECORDS?

11:48:13 1 A YES.

11:48:23 2 MS. WONG: LET THE RECORD REFLECT I'M
11:48:25 3 SHOWING DEFENSE COUNSEL THE NEXT TWO EXHIBITS,
11:48:29 4 EXHIBITS 209 AND 210.

11:48:53 5 Q MR. FUNG, I'M GOING TO SHOW YOU WHAT HAS BEEN
11:48:56 6 MARKED AS 209 AND 210 FOR IDENTIFICATION PURPOSES
11:49:02 7 AND ASK YOU IF YOU RECOGNIZE THEM?

11:49:03 8 A YES.

11:49:04 9 Q NOW, BEGINNING WITH -- THEY ARE, IN FACT,
11:49:12 10 ALREADY IN EVIDENCE. LET'S PUBLISH 209.

11:49:21 11 IS THIS A LETTER YOU RECEIVED FROM THE
11:49:24 12 I.R.S. REGARDING THE BROCKS TAX RETURN RECORDS?

11:49:26 13 A YES.

11:49:26 14 Q NOW, AT THE TIME THAT YOU RECEIVED -- AND THEN
11:49:29 15 DID YOU RESPOND TO THIS LETTER?

11:49:30 16 A YES.

11:49:30 17 Q AND IS THAT EXHIBIT -- IS THAT EXHIBIT 210?

11:49:35 18 A YES.

11:49:40 19 Q AND 210 IS ALREADY IN EVIDENCE.

11:49:42 20 AT THIS TIME WE WOULD PUBLISH 210 TO THE
11:49:45 21 JURY.

11:49:54 22 NOW, HERE, MR. FUNG, YOU TELL THE I.R.S.
11:49:57 23 YOU DON'T HAVE ANY RECORDS. DID YOU DISCUSS THE
11:50:06 24 PREPARATION OF THIS LETTER WITH THE DEFENDANT?

11:50:07 25 A I THINK SO.

11:50:08 1 Q YOU THINK SO OR YOU DID?

11:50:10 2 A I DID.

11:50:11 3 Q AND WHAT, IF YOU RECALL, DID YOU DISCUSS WITH
11:50:13 4 THE DEFENDANT ABOUT THIS?

11:50:14 5 A THAT I HAD DONE WHAT HE HAD TOLD ME TO DO.

11:50:18 6 Q AND SO WHAT WAS THE REASON THAT YOU DIDN'T
11:50:21 7 HAVE THE RECORDS TO GIVE TO REVENUE AGENT OESER?

11:50:26 8 A I'M SORRY?

11:50:26 9 Q WHAT WAS THE REASON THAT YOU DIDN'T HAVE ANY
11:50:28 10 RECORDS TO GIVE TO THIS REVENUE AGENT WHO WAS
11:50:31 11 ASKING FOR THEM?

11:50:32 12 A BECAUSE I ALREADY GAVE IT TO THE I.R.S. CID
11:50:35 13 DIVISION IN REDDING, CALIFORNIA.

11:50:45 14 Q I'D LIKE TO GO BACK TO GOVERNMENT'S EXHIBIT 4,
11:50:48 15 MR. FUNG, AND ASK IF YOU RECOGNIZE THE FAX NUMBER
11:50:50 16 THAT IS AT THE TOP OF THAT EXHIBIT?

11:51:02 17 A YES.

11:51:02 18 Q AND WHOSE FAX NUMBER IS IT?

11:51:04 19 A THE DEFENDANT'S.

11:51:05 20 Q HAD YOU RECEIVED FAXES FROM THE DEFENDANT AT
11:51:08 21 THAT NUMBER? NOT IF YOU RECEIVED THIS PARTICULAR
11:51:21 22 FAX, BUT HAVE YOU RECEIVED FAX -- DID YOU RECEIVE
11:51:24 23 FAXES --

11:51:24 24 A YES.

11:51:24 25 Q AND GOING TO THE SECOND PAGE OF THAT EXHIBIT,

DO YOU RECOGNIZE THE NAME THAT IS WRITTEN THERE?

A YES.

Q AND DID YOU HAVE ANY DISCUSSIONS WITH THE
DEFENDANT BEFORE YOU TURNED IN THE RECORDS TO
I.R.S. CID ABOUT TALKING TO THE BROCKS TO TRY TO
GET THEM TO GO THROUGH WITH THE DEAL?

A I DON'T RECALL.

MS. WONG: AT THIS TIME THE GOVERNMENT
WOULD OFFER GOVERNMENT'S EXHIBIT 4 INTO EVIDENCE.

MR. FONG: NO OBJECTION, YOUR HONOR.

THE COURT: IT'S RECEIVED WITHOUT
OBJECTION.

(WHEREUPON, GOVERNMENT'S EXHIBIT NUMBER 4,
HAVING BEEN PREVIOUSLY MARKED FOR
IDENTIFICATION, WAS ADMITTED INTO
EVIDENCE.)

BY MS. WONG:

Q AND IF WE CAN GO TO THE THIRD PAGE OF THIS
EXHIBIT -- OR SECOND PAGE. SORRY.

AND IS THAT THE DEFENDANT'S CELL PHONE
NUMBER AS WELL, 808-382-1894?

A YES.

Q LET'S GO TO THE THIRD PAGE OF THIS FAX AND
BLOW UP THE SECOND PARAGRAPH OF THE MEMO THAT
BEGINS "ALOHA."

11:52:58 1
11:53:11 2
11:53:14 3
11:53:18 4
11:53:18 5
11:53:27 6
11:53:30 7
11:53:33 8
11:53:36 9
11:53:40 10
11:53:43 11
11:53:52 12
11:53:54 13
11:53:57 14
11:53:58 15
11:53:58 16
11:53:59 17
11:54:00 18
11:54:11 19
11:54:13 20
11:54:21 21
11:54:24 22
11:54:28 23
11:54:30 24
11:54:42 25

NOW, MR. FUNG, HAD YOU ACTUALLY
CONCLUDED -- NOW, MR. FUNG, HAD YOU ACTUALLY
CONCLUDED A TAX ANALYSIS OF THE BROCKS' TRUST?
A NO.
Q HAD YOU ACTUALLY DETERMINED THAT THERE WAS AT
LEAST 2.5 MILLION IN UNTAXED INCOME?
A NO.
Q LET'S GO TO THE THIRD PAGE OF THIS EXHIBIT OR
THE THIRD -- OR THE NEXT PAGE OF THIS EXHIBIT.
AND LET'S BLOW UP THE SECOND AND THIRD
PARAGRAPHS.
HAD YOU -- WERE YOU THE PERSON WHO
RECOMMENDED TURNING THE RECORDS OF THE BROCKS INTO
THE I.R.S.?
A NO.
Q WHO RECOMMENDED THAT?
A THE DEFENDANTS.
Q NOW, LET'S GO DOWN TO THE LAST FULL PARAGRAPH
OF THIS PAGE AND BLOW THAT UP.
NOW, WHO IS THE -- WHO ARE THE PEOPLE WHO
ACTUALLY PULLED OUT OF THE TRANSACTION THAT
OCCURRED ON -- AT THE BROCKS' HOUSE?
A THE BROCKS.
Q NOW, LET'S GO TO THE THIRD PAGE AND LOOK AT
THE FIRST FULL PARAGRAPH.

11:54:45 1 WAS THE DEFENDANT PRESENT IN PART OF THE
11:54:53 2 TRANSACTION THAT OCCURRED ON MARCH 28TH, 2003?

11:54:56 3 A YES.

11:54:56 4 Q NOW, LET'S GO TO THE SECOND TO LAST PARAGRAPH
11:55:00 5 OF THIS, OF THIS LETTER. IT BEGINS, "I TOLD
11:55:08 6 MR. FUNG."

11:55:14 7 THE THIRD PAGE OF THE LETTER. IT'S
11:55:19 8 THE -- THE FOURTH PAGE -- KEEP GOING. IT'S THE BIG
11:55:23 9 PARAGRAPH FROM THE LAST PARAGRAPH HERE.

11:55:26 10 WERE YOU EVER TOLD BY THE DEFENDANT NOT
11:55:37 11 TO HAND OVER THE TRUST RECORDS TO I.R.S. CID?

11:55:40 12 A NO.

11:55:40 13 Q MR. FUNG, I'D LIKE TO SHOW YOU WHAT HAS BEEN
11:56:13 14 MARKED AS GOVERNMENT'S EXHIBIT 36.

11:56:22 15 DO YOU RECOGNIZE THAT DOCUMENT?

11:56:24 16 A NO.

11:56:35 17 Q I'D LIKE TO TALK TO YOU A LITTLE BIT ABOUT
11:56:40 18 SOME OF THE THINGS -- I WANT TO ASK YOU A FEW
11:56:42 19 QUESTIONS, THOUGH, IF YOU WANT TO JUST TAKE A LOOK
11:56:45 20 AND EXAMINE THAT DOCUMENT. I'M GOING TO ASK YOU
11:56:47 21 JUST A FEW QUESTIONS.

11:56:54 22 AND I'M GOING TO DIRECT YOUR ATTENTION TO
11:56:56 23 THE PARTS THAT LINE 25 TO 30 OF THAT DOCUMENT,
11:57:00 24 MR. FUNG?

11:57:00 25 A OKAY.

11:57:01 1 Q OKAY. DID YOU EVER ASK FOR A WAIVER AS PART
11:57:24 2 OF GUARANTEEING THE \$2.285 MILLION NOTE?

11:57:31 3 A NO.

11:57:32 4 Q LET'S GO TO PAGE 2 OF THIS DOCUMENT AND
11:57:34 5 PARTICULARLY LOOKING AT LINES 23 AND 24. DO YOU
11:57:47 6 SEE THOSE LINES?

11:57:48 7 A YES.

11:57:48 8 Q AND HAD YOU EVER HAD ANY PERSONAL DISPUTES
11:57:51 9 WITH THE BROCKS BEFORE YOU WENT TO MEET WITH THEM
11:57:53 10 ON MARCH 23RD, 2003?

11:57:55 11 A NO.

11:57:56 12 Q AND WHEN MR. BROCK CALLED YOU AND GOT THE
11:57:59 13 DEFENDANT'S NAME, DID HE SAY ANYTHING ABOUT TURNING
11:58:02 14 YOU IN FOR PREPARING TAX RETURNS?

11:58:03 15 A NO.

11:58:03 16 Q AS YOU UNDERSTOOD IT, WHY WAS DR. BROCK ASKING
11:58:07 17 YOU FOR THE DEFENDANT'S NUMBER?

11:58:09 18 A THAT I TOLD THE BROCKS THAT THE DEFENDANT IS
11:58:19 19 THE PERSON I HIRED TO DEAL WITH ALL OF THAT AND
11:58:22 20 THEY WANTED TO HIRE THE DEFENDANT.

11:58:28 21 Q AND NOW, LET'S GO TO PAGE 2 AND LOOK AT LINES
11:58:34 22 25 TO 28.

11:58:52 23 A YES.

11:58:53 24 Q DID YOU EVER SAY THAT YOU WANTED TO TAKE THE
11:58:55 25 BROCKS TO THE GRAND JURIES?

11:58:56 1

A NO.

11:58:56 2

Q AND WHEN YOU SPOKE WITH THE DEFENDANT ABOUT

11:59:02 3

GRAND JURIES, HAD HE EVER SUGGESTED THAT HIS USE OF

11:59:04 4

THEM WAS FOR A JOKE OR NOT SERIOUS?

11:59:07 5

A NO.

11:59:07 6

Q OR TONGUE IN CHEEK?

11:59:12 7

A NO.

11:59:12 8

Q AND NOW, LET'S GO TO PAGE 3, LINES 7 THROUGH

11:59:16 9

12.

11:59:42 10

A YES.

11:59:43 11

Q ONCE AGAIN, WAS THE DEFENDANT DISCOURAGING YOU

11:59:45 12

FROM GOING TO THE I.R.S. FOR THREE WEEKS?

11:59:47 13

A NO.

11:59:47 14

Q AND HOW DID YOU GET THE RECORDS AGAIN THAT YOU

11:59:54 15

TOOK TO THE I.R.S.?

11:59:55 16

A FROM THE DEFENDANT.

11:59:56 17

Q NOW, FINALLY, LET'S LOOK AT PAGE 3, LINES --

12:00:00 18

THE END OF LINE 44 TO THE BEGINNING OF PAGE 4.

12:00:23 19

A OKAY.

12:00:24 20

Q WHO ACTUALLY CANCELED -- WAS IT THE DEFENDANT

12:00:29 21

WHO ACTUALLY CANCELLED THE TRANSACTION WITH THE

12:00:31 22

BROCKS?

12:00:31 23

A NO.

12:00:31 24

Q WHO CANCELLED THE TRANSACTION?

12:00:33 25

A THE BROCKS.

12:00:37 1 MS. WONG: AT THIS TIME THE GOVERNMENT IS
12:00:39 2 AT A GOOD STOPPING POINT.

12:00:41 3 THE COURT: LET'S TAKE OUR RECESS AT THIS
12:00:43 4 TIME, LADIES AND GENTLEMEN. I'LL ASK YOU TO RETURN
12:00:44 5 TO BE READY TO BE CALLED IN AT 1:30 PLEASE. SO
12:00:48 6 WE'LL BE IN THE NOON RECESS, AND I'LL REMIND YOU OF
12:00:51 7 THE ADMONITION.

13:30:18 8 (WHEREUPON, THE LUNCH RECESS WAS TAKEN.)

9

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14

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16

17

18

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24

25

AFTERNOON SESSION

(WHEREUPON, THE PROCEEDINGS IN THIS
MATTER WERE HELD OUT OF THE PRESENCE OF THE JURY:)

THE COURT: SORRY ABOUT THAT. WE HAVE A
CIVIL CALENDAR TOMORROW, OF COURSE. SO THAT'S WHAT
WE DID ALL NOON HOUR IS TALK ABOUT CLASS ACTIONS
AND STUFF LIKE THAT.

(WHEREUPON, THE FOLLOWING PROCEEDINGS
WERE HELD IN THE PRESENCE OF THE JURY:)

THE COURT: ALL RIGHT. WE'RE BACK ON THE
RECORD. OUR JURY IS HERE.

THE DEFENDANT IS PRESENT AND ALL COUNSEL
ARE PRESENT AND MR. FUNG IS ON THE STAND.

YOU'RE STILL UNDER OATH, SIR.

BEFORE WE GET STARTED, I WANT TO ASK
ABOUT TIMING TOMORROW, FRIDAY. WE HAVE A CIVIL
CALENDAR TOMORROW MORNING, THAT'S WHY WE'RE NOT
MEETING TOMORROW MORNING, BUT I OFFERED TO START AT
1:00 O'CLOCK TOMORROW.

I DIDN'T EVEN ASK YOU GUYS, IS THAT OKAY
WITH YOU?

SO WE COULD START AT 1:00 O'CLOCK
TOMORROW AND THEN FINISH AT PERHAPS 4:00. IT'S
POSSIBLE WE CAN EXTEND TO 4:30 IF WE NEED TO AS

13:40:55 1 WELL. I HOPE THAT DOESN'T INCONVENIENCE ANYONE AND
13:40:57 2 I DON'T SEE ANYONE'S HANDS UP.

13:40:59 3 AND THEN TOMORROW WE'LL RESUME AT 1:00
13:41:03 4 O'CLOCK HERE. SO IF YOU COLLECT YOURSELVES AND YOU
13:41:05 5 CAN GET STARTED AS CLOSE TO 1:00 AS WE CAN, THAT
13:41:10 6 WOULD BE GREAT.

13:41:10 7 ALL RIGHT. MS. WONG, DO YOU WANT TO
13:41:14 8 CONTINUE YOUR EXAMINATION?

13:41:15 9 MS. WONG: YES, THANK YOU, YOUR HONOR.

13:41:19 10 Q MR. FUNG, BEFORE WE STOP TALKING ABOUT THE
13:41:24 11 BROCKS, I JUST HAVE ONE QUESTION -- A FEW QUESTIONS
13:41:27 12 ABOUT MONEY.

13:41:28 13 WITH REGARDS TO THE CHECK THAT YOU GOT
13:41:30 14 FROM THE DEFENDANT, DID YOU EVER RECEIVE ANY MONEY
13:41:32 15 FOR YOUR ROLE IN REFERRING THE BROCKS TO THE
13:41:38 16 DEFENDANT?

13:41:38 17 A YES.

13:41:44 18 Q WHO DID YOU RECEIVE THAT MONEY FROM?

13:41:45 19 A NATIONAL TRUST SERVICES.

13:41:46 20 Q FOR -- SO WAS THAT MONEY YOU RECEIVED FROM
13:41:51 21 NATIONAL TRUST SERVICES WAS FOR REFERRING THE
13:41:53 22 BROCKS TO NATIONAL TRUST SERVICES?

13:41:55 23 A YES.

13:41:55 24 Q AND DID YOU RECEIVE ANY MONEY EVER FOR
13:42:00 25 REFERRING THE BROCKS TO THE DEFENDANT?

13:42:02 1
13:42:02 2
13:42:05 3
13:42:07 4
13:42:07 5
13:42:13 6
13:42:19 7
13:42:22 8
13:42:25 9
13:42:27 10
13:42:32 11
13:42:39 12
13:42:40 13
13:42:42 14
13:42:43 15
13:42:50 16
13:42:51 17
13:42:52 18
13:42:54 19
13:42:55 20
13:42:55 21
13:42:57 22
13:42:59 23
13:42:59 24
13:43:06 25

A YES.

Q AND WHAT SORT OF -- AND HOW MUCH MONEY DID YOU RECEIVE FROM THE DEFENDANT FOR MAKING THAT REFERRAL?

A FROM MY MEMORY I BELIEVE IT'S ABOUT \$2,000.

Q NOW, DID YOU KNOW WHEN YOU MADE THE REFERRAL TO THE BROCKS OR YOU GAVE DR. BROCK THE DEFENDANT'S NUMBER THAT YOU WERE GOING TO BE RECEIVING \$2,000?

A NO, I WASN'T EXPECTING ANY MONEY.

Q WHEN DID YOU LEARN THAT YOU WOULD GET \$2,000?

A WHEN THE DEFENDANT ARRIVED AND I MET UP WITH HIM.

Q AND WHAT HAPPENED WHEN THE DEFENDANT ARRIVED AND YOU MET UP WITH HIM?

A DURING THE COURSE OF -- WHEN THE DEFENDANT SAID IT IS FAIR THAT AT SOME POINT IN TIME HE GAVE ME SOME MONEY.

Q AND DID HE GIVE YOU THAT MONEY IN FRONT OF THE BROCKS?

A NO.

Q AND TO YOUR KNOWLEDGE DID THE BROCKS KNOW THAT YOU RECEIVED MONEY FROM THE DEFENDANT?

A NO.

Q ALL RIGHT. AT THIS TIME, MR. FUNG, I'D LIKE TO STOP TALKING ABOUT THE BROCKS AND MOVE ON AND

13:43:09 1 TALK ABOUT TWO OTHER INDIVIDUALS, AND I'LL MENTION
13:43:12 2 THEY'RE NAMES: MR. JEAN-PAUL BOURDIER AND MINH HA
13:43:17 3 TRAN.

13:43:17 4 A YES.

13:43:17 5 Q AND WERE THOSE CLIENTS WHO YOU PREPARED TAX
13:43:20 6 RETURNS?

13:43:21 7 A YES.

13:43:21 8 Q AND WERE THEY ALSO MEMBERS OF NATIONAL TRUST
13:43:23 9 SERVICES?

13:43:23 10 A YES.

13:43:24 11 MS. WONG: NOW, I'D LIKE TO PUBLISH TO
13:43:34 12 THE JURY 123, AND IT'S ALREADY BEEN ADMITTED.

13:43:39 13 THE COURT: IT'S BEEN ADMITTED, YES.

13:43:39 14 BY MS. WONG:

13:43:42 15 Q NOW, IF WE CAN FOCUS ON THE TOP PART OF THIS
13:43:44 16 TRUST RETURN. WHAT IS THE NAME OF THIS TRUST THAT
13:43:53 17 IS LISTED ON THIS 2000 FORM 1041.

13:43:57 18 A MG TRUST.

13:43:58 19 Q AND WAS THIS A TRUST THAT BELONGED TO
13:44:00 20 MR. BOURDIER AND MS. TRINH?

13:44:05 21 A YES.

13:44:05 22 THE COURT: MR. SMITH, IF YOU WANT TO
13:44:08 23 PULL THAT SCREEN OUT, I THINK YOU CAN PULL IT
13:44:11 24 CLOSER IF THAT WOULD BE HELPFUL.

13:44:13 25 MS. SOLLECITO, IS THAT IN YOUR WAY?

13:44:16 1
13:44:17 2
13:44:19 3
13:44:20 4
13:44:23 5
13:44:28 6
13:44:29 7
13:44:31 8
13:44:33 9
13:44:33 10
13:44:41 11
13:44:55 12
13:44:57 13
13:44:59 14
13:45:01 15
13:45:03 16
13:45:03 17
13:45:05 18
13:45:06 19
13:45:06 20
13:45:24 21
13:45:24 22
13:45:27 23
13:45:29 24
13:45:29 25

JUROR: NO, IT'S FINE.

THE COURT: THANK YOU. I'M SORRY.

MS. WONG: THANK YOU, YOUR HONOR.

Q NOW, IS THIS ONE OF THE RETURNS THAT YOU
PREPARED FOR MR. BOURDIER AND MINH HA TRINH?

A YES.

Q AND IF WE CAN FOCUS JUST ON THE BOTTOM.

IS THAT YOUR SIGNATURE DOWN THERE?

A YES.

Q I'D LIKE TO PUBLISH WHAT IS ALREADY IN
EVIDENCE AS GOVERNMENT'S EXHIBIT 124.

NOW, MR. FUNG, COULD YOU READ THE TRUST?

A MUDRACHI TRUST.

Q AND IS THAT ALSO ONE OF THE TRUSTS THAT
BELONGED TO MR. BOURDIER?

A YES.

Q AND IS THIS ALSO ONE OF THE TRUSTS THAT YOU
PREPARED FOR HIM?

A YES.

Q NOW, MR. FUNG, WHAT WAS THE NAME OF THIS
TRUST?

A NINJACO TRUST.

Q IS THIS ANOTHER TRUST THAT BELONGED TO
MR. BOURDIER?

A YES.

13:45:30 1 Q AND IS THIS ANOTHER RETURN THAT YOU ALSO
13:45:32 2 PREPARED FOR HIM?

13:45:33 3 A YES.

13:45:33 4 Q AND THESE THREE RETURNS THAT WE JUST LOOKED
13:45:36 5 AT, WERE THESE RETURNS PREPARED IN ACCORDANCE WITH
13:45:40 6 THE PRINCIPLES OF NATIONAL TRUST SERVICES?

13:45:41 7 A YES.

13:45:41 8 Q AND WHAT WAS THE EFFECT OF THE PREPARING IT ON
13:45:48 9 THE BOURDIER'S TAXES?

13:45:49 10 A THE TAXES EITHER WERE REDUCED OR BEEN
13:45:53 11 TRANSFERRED.

13:45:53 12 Q AND SO WOULD YOU SAY THEY WERE HIGHER OR LOWER
13:45:59 13 AS A RESULT OF USING THE N.T.S. SYSTEM?

13:46:01 14 A LOWER.

13:46:02 15 Q I'D LIKE TO NOW DIRECT MR. FUNG'S ATTENTION TO
13:46:18 16 GOVERNMENT'S EXHIBIT 132, WHICH IS ALSO IN
13:46:21 17 EVIDENCE.

13:46:21 18 AND IS THIS ALSO ONE OF THE RETURNS YOU
13:46:23 19 PREPARED FOR MR. BOURDIER AND MINH HA TRINH?

13:46:26 20 A YES.

13:46:26 21 Q AND IF WE CAN ACTUALLY FOCUS ON THE STAMP THAT
13:46:29 22 APPEARS ON THIS PARTICULAR RETURN. ACCORDING TO
13:46:37 23 THIS STAMP, MR. FUN, WHEN DID THE I.R.S. RECEIVE
13:46:39 24 THE BOURDIERS 2002 TRUST RETURN?

13:46:47 25 A 2003.

13:46:48 1 Q AND IF WE CAN GO DOWN TO THE SIGNATURE BLOCK.

13:46:51 2 DID YOU PREPARE THIS, MR. FUNG?

13:46:53 3 A YES.

13:46:53 4 Q AND -- BUT YOUR SIGNATURE DOES NOT APPEAR ON
13:46:55 5 THIS RETURN?

13:46:56 6 A YES.

13:46:56 7 Q AND AT THIS TIME WAS THIS AFTER YOU WERE
13:46:59 8 ALREADY BEING INVESTIGATED BY DENNIS BROWN?

13:47:02 9 A YES.

13:47:07 10 Q AND WHAT IS THE REASON YOUR SIGNATURE DOES NOT
13:47:09 11 APPEAR ON THE RETURN?

13:47:11 12 A I DON'T WANT TO BE RESPONSIBLE.

13:47:12 13 Q SO IS IT FAIR TO SAY THAT YOU DIDN'T WANT THE
13:47:15 14 I.R.S. TO KNOW THAT YOU PREPARED MR. BOURDIER'S
13:47:17 15 RETURN?

13:47:17 16 A YES.

13:47:17 17 Q I'D LIKE TO DIRECT YOUR ATTENTION NOW TO
13:47:24 18 GOVERNMENT'S EXHIBIT 122, WHICH IS ALSO IN
13:47:27 19 EVIDENCE.

13:47:30 20 IS THIS ONE OF THE INDIVIDUAL INCOME TAX
13:47:33 21 RETURNS THAT YOU PREPARED FOR MR. BOURDIER AND HIS
13:47:35 22 WIFE?

13:47:35 23 A YES.

13:47:36 24 Q NOW, WHAT I'D LIKE TO DO WITH THIS PARTICULAR
13:47:38 25 RETURN IS GO TO PAGE 5, THE SCHEDULE A, AND I'D

13:47:50 1 LIKE TO FOCUS ON THE INTEREST THAT WAS PAID HERE.

13:48:06 2 NOW, MR. FUNG, CAN YOU EXPLAIN WHAT THE
13:48:09 3 INTEREST PAID HERE, THE 87,774, WHERE THAT NUMBER
13:48:16 4 COMES FROM?

13:48:16 5 A THAT'S THE MORTGAGE INTEREST. I KNEW THAT
13:48:26 6 JEAN-PAUL BOURDIER, THEY HAD TAKEN OUT A MORTGAGE
13:48:30 7 FOR THE TRUST THAT THEY CREATED AND PAID INTEREST
13:48:32 8 TO THE TRUST AND IN RETURN TAKEN AN INTEREST
13:48:36 9 DEDUCTION AGAINST IT ON THEIR PERSONAL RETURNS.

13:48:38 10 Q SO THIS NUMBER THAT WE SEE HERE, SO THE TRUST
13:48:40 11 THAT THEY GOT A MORTGAGE -- THAT MR. BOURDIER GOT A
13:48:44 12 MORTGAGE FROM, DID HE ALSO CONTROL THAT TRUST?

13:48:47 13 A YES.

13:48:47 14 Q AND IS IT FAIR TO SAY THAT HE THEN LENT MONEY
13:48:50 15 FROM THAT TRUST TO HIMSELF?

13:48:52 16 A YES.

13:48:52 17 Q AND THEN HE PAID INTEREST BACK TO THE TRUST HE
13:48:55 18 CONTROLLED?

13:48:56 19 A YES.

13:48:56 20 Q AND THESE ARE THE -- SOME OF THE DEDUCTIONS
13:49:01 21 ARE REFLECTED THERE FOR THAT MORTGAGE?

13:49:03 22 A YES.

13:49:04 23 Q FOR THAT INTEREST.

13:49:04 24 AND I'D JUST LIKE TO GO TO THE LAST PAGE
13:49:07 25 OF THIS RETURN AND FOCUS ON WHAT IS SHOWN THERE.

13:49:18 1 THE NEXT PAGE.

13:49:25 2 AND, MR. FUNG, IS THIS SHOWN HERE THE
13:49:29 3 64,000, DOES THAT CORRESPOND TO THE MORTGAGE AND
13:49:33 4 THAT YOU WERE JUST TALKING ABOUT?

13:49:34 5 A YES.

13:49:34 6 Q NOW, AT THE TIME THAT YOU MADE THESE
13:49:43 7 DEDUCTIONS ON MR. BOURDIER'S BEHALF, WAS THAT IN
13:49:45 8 ACCORD WITH NATIONAL TRUST PRINCIPLES?

13:49:48 9 A YES.

13:49:48 10 Q AND DID YOU KNOW THAT HE WASN'T -- THAT THAT
13:49:51 11 WAS AN IMPROPER DEDUCTION WHEN YOU TOOK IT?

13:49:53 12 A AT THE TIME I DIDN'T KNOW.

13:49:55 13 Q THIS IS IN 2001 WHEN YOU PREPARED THE RETURN?

13:50:01 14 A YES.

13:50:01 15 Q BUT DID YOU COME TO LEARN THAT THEY WERE
13:50:03 16 IMPROPER?

13:50:04 17 A YES.

13:50:04 18 Q AND YOU STILL KEPT PREPARING RETURNS WITH
13:50:07 19 THOSE DEDUCTIONS ON IT?

13:50:08 20 A YES.

13:50:08 21 Q NOW, MR. BOURDIER -- DID THERE COME A TIME
13:50:16 22 WHEN YOU SPOKE TO MR. BOURDIER ABOUT THE FACT THAT
13:50:18 23 THE I.R.S. WAS INVESTIGATING NATIONAL TRUST
13:50:22 24 SERVICES?

13:50:22 25 A YES.

13:50:22 1 Q AND WHAT, IF ANYTHING, DID YOU TELL

13:50:25 2 MR. BOURDIER?

13:50:26 3 A THAT THE I.R.S. IS AUDITING, TO MY KNOWLEDGE,
13:50:48 4 THE TAX RETURN, THE TRUST TAX RETURN RELATED TO
13:50:52 5 NATIONAL TRUST SERVICES.

13:50:53 6 Q AND WHAT, IF ANYTHING, DID YOU TELL

13:50:59 7 MR. BOURDIER AT THAT TIME ABOUT THE DEFENDANT?

13:51:00 8 A THAT I HIRED THE DEFENDANT TO HELP ME ON MY
13:51:11 9 TAX TRUSTS AND ISSUES.

13:51:14 10 Q AND DID YOU MAKE ANY RECOMMENDATIONS ABOUT
13:51:17 11 WHAT MR. BOURDIER SHOULD DO GIVEN THAT THE I.R.S.
13:51:21 12 WAS INVESTIGATING NATIONAL TRUST SERVICES AND ITS
13:51:25 13 MEMBERS?

13:51:25 14 A THAT THEY CONSIDER HIRING THE DEFENDANT.

13:51:31 15 Q AND DID YOU PROVIDE A WAY FOR MR. BOURDIER TO
13:51:34 16 GET IN CONTACT WITH THE DEFENDANT?

13:51:35 17 A YES.

13:51:36 18 Q AND WHAT DID YOU GIVE HIM?

13:51:37 19 A THE NAME AND PHONE NUMBER.

13:51:42 20 Q AND DID THERE COME A TIME WHEN YOU, IN FACT,
13:51:45 21 HAD LEARNED THAT MR. BOURDIER HAD GOTTEN IN CONTACT
13:51:49 22 WITH THE DEFENDANT?

13:51:49 23 A YES.

13:51:49 24 Q AND HOW DID YOU LEARN THAT THEY HAD BEEN IN
13:51:52 25 CONTACT?

13:51:52 1 A THAT, AGAIN, I WAS TOLD TO MAKE SURE THE
13:51:59 2 MONEY, THE FEE TO THE DEFENDANT IS THERE BEFORE THE
13:52:02 3 DEFENDANT COME OVER FROM HAWAII.

13:52:04 4 Q SO IS IT FAIR -- SO IS IT FAIR TO SAY THAT THE
13:52:08 5 DEFENDANT CONTACTED YOU OR THAT YOU LEARNED FROM
13:52:11 6 THE DEFENDANT?

13:52:11 7 A I'M NOT SURE WHO CONTACTED WHO, BUT THAT'S
13:52:17 8 DURING THE CONVERSATION.

13:52:18 9 Q AND SO THAT'S -- IS IT -- SO WHO TOLD YOU
13:52:21 10 THAT, THE DEFENDANT OR MR. BOURDIER TO MAKE SURE
13:52:23 11 ABOUT THE MONEY?

13:52:24 12 A THE DEFENDANT.

13:52:25 13 Q AND DID YOU, IN FACT, COLLECT THE MONEY THAT
13:52:30 14 MR. BOURDIER WAS PAYING TO THE DEFENDANT?

13:52:35 15 A I DON'T RECALL.

13:52:39 16 Q AND DID THERE COME A TIME WHEN THE DEFENDANT
13:52:41 17 CAME OVER FROM HAWAII?

13:52:42 18 A YES.

13:52:42 19 Q AND WHERE DID YOU MEET HIM?

13:52:44 20 A IN THE AIRPORT.

13:52:46 21 Q AND WHERE DID YOU TWO GO FROM THE AIRPORT?

13:52:48 22 A TO BOURDIER'S RESIDENCE IN BERKELEY.

13:52:56 23 Q AND IF YOU KNOW, WHAT DOES MR. BOURDIER DO OR
13:52:59 24 WHERE IS HE EMPLOYED?

13:53:00 25 A HE'S EMPLOYED BY THE UNIVERSITY OF CALIFORNIA

13:53:04 1 BERKELEY AS A PROFESSOR.

13:53:05 2 Q AND DO YOU KNOW HOW HIS WIFE MINH HA TRINH IS
13:53:10 3 EMPLOYED?

13:53:10 4 A ALSO THE SAME PLACE.

13:53:11 5 Q AND AT THIS -- WHEN YOU WERE GOING WITH THE
13:53:14 6 DEFENDANT TO THIS MEETING, WHAT DID YOU UNDERSTAND
13:53:16 7 THE PURPOSE OF MEETING MR. BOURDIER AT HIS HOUSE TO
13:53:19 8 BE?

13:53:19 9 A SIMILAR TO WHAT THE DEFENDANT TOLD ME TO DO.

13:53:24 10 Q AND HOW DID IT COMPARE TO WHAT YOU AND THE
13:53:27 11 DEFENDANT HAD TRIED TO DO WITH THE BROCKS?

13:53:30 12 MR. FONG: OBJECTION, AMBIGUOUS.
13:53:35 13 OBJECTION, AMBIGUOUS.

13:53:36 14 THE COURT: DO YOU WANT TO REPHRASE THAT?
13:53:38 15 I'LL SUSTAIN THE OBJECTION.

13:53:42 16 BY MS. WONG:

13:53:43 17 Q AND IF YOU'LL RECALL, WHEN YOU WENT TO GO MEET
13:53:45 18 WITH THE BROCKS, WOULD YOU SAY THAT THE -- THAT
13:53:48 19 WHAT YOU UNDERSTOOD THE PURPOSE OF GOING TO SEE
13:53:50 20 MR. BOURDIER, WAS THAT SIMILAR OR DIFFERENT FROM
13:53:53 21 WHY YOU WERE GOING TO SEE MR. -- FROM WHY YOU WERE
13:53:56 22 GOING TO GO SEE THE BROCKS?

13:53:58 23 A SIMILAR.

13:53:58 24 Q SO WHAT DID YOU UNDERSTAND WAS GOING TO BE
13:54:01 25 DISCUSSED AT THIS MEETING WHEN YOU WERE GOING

13:54:05 1 THERE?

13:54:06 2 A THEY HAD TO DEAL WITH ALL OF THE TRUST TAX
13:54:20 3 RETURNS THAT BOURDIER HAVE ALL OF THE PAST YEARS.

13:54:26 4 Q AND WHAT -- WHEN YOU SAY "DEAL WITH THOSE
13:54:31 5 TRUST RETURNS," WHAT DID YOU UNDERSTAND THAT YOU
13:54:33 6 AND THE DEFENDANT WERE GOING TO DO?

13:54:38 7 A SETTING UP A CORPORATION AND REPORTING THE
13:54:45 8 RETURNS.

13:54:45 9 Q AND WHEN YOU GOT TO THE BOURDIER'S HOME, DID
13:54:48 10 YOU, IN FACT, HAVE A MEETING WITH THE BOURDIERS?

13:54:50 11 A YES.

13:54:50 12 Q AND WHAT WAS DISCUSSED AT THAT MEETING?

13:54:52 13 A SETTING UP THE CORPORATION AND THE RETURNS AND
13:55:00 14 SOME TYPE OF TRANSACTION AND FROM THE CORPORATION
13:55:10 15 THE PROMISSORY NOTES OR SOMETHING LIKE THAT.

13:55:13 16 Q AND THIS TRANSACTION, IF YOU KNOW, BETWEEN
13:55:15 17 WHICH CORPORATIONS WAS THIS TRANSACTION GOING TO
13:55:17 18 BE?

13:55:17 19 A A TRANSACTION THAT THE BOURDIERS WERE GOING TO
13:55:24 20 SET UP WHICH NAMED IT HEART MIND CORPORATION.

13:55:28 21 Q AND WAS THAT HEART MIND CORPORATION, WAS IT
13:55:30 22 THEN GOOD TO ENTER INTO ANY SUBSEQUENT TRANSACTIONS
13:55:37 23 AFTER BEING SET UP?

13:55:38 24 A YES.

13:55:38 25 Q AND WHAT TRANSACTION WAS THAT?

13:55:40 1 A SIMILAR TO THE PLOT.

13:55:45 2 Q AND WHEN YOU SAY "SIMILAR," IS THAT BECAUSE IT
13:55:48 3 INVOLVED THE SAME CORPORATION?

13:55:49 4 A TYPE OF ASSETS, WHOLE ASSETS, SELL ALL OF THE
13:55:53 5 ASSETS TO THE CORPORATION AND MAYBE A PROMISSORY
13:56:01 6 NOTE WOULD BE DRAFT OUT.

13:56:03 7 Q NOW, WHAT CORPORATION WERE THE ASSETS, THE
13:56:06 8 BOURDIER ASSETS GOING TO BE SOLD TO?

13:56:14 9 A I DON'T RECALL BUT PROBABLY MOST LIKELY THE
13:56:17 10 HCHC.

13:56:18 11 Q YOU MAY NOT RECALL THE NAME OF THE
13:56:22 12 CORPORATION. DO YOU RECALL WHO WAS GOING TO BE THE
13:56:23 13 OWNER OF THE CORPORATION WHO WAS GOING TO BUY ALL
13:56:25 14 OF THE BOURDIER ASSETS?

13:56:29 15 A THE DEFENDANT'S CORPORATION.

13:56:30 16 Q NOW, IN ORDER -- AND DID THE BOURDIERS, IN
13:56:32 17 FACT, AGREE TO GO FORWARD WITH THIS PLAN?

13:56:34 18 A YES.

13:56:35 19 Q AND WERE YOU PRESENT WHEN THEY DID?

13:56:36 20 A YES.

13:56:40 21 Q AND IN ADDITION TO AGREEING TO GO FORWARD,
13:56:42 22 WERE ANY DOCUMENTS CREATED TO MEMORIALIZE THIS
13:56:45 23 TRANSACTION?

13:56:46 24 A YES.

13:56:46 25 Q AND WERE YOU PRESENT WHEN THOSE WERE DRAFTED?

13:56:48 1 A YES.

13:56:48 2 Q NOW, WHO DRAFTED THOSE DOCUMENTS?

13:56:51 3 A THE DEFENDANTS AND MYSELF I THINK.

13:56:58 4 Q AND WHAT ROLE DID YOU HAVE IN DRAFTING THOSE
13:57:01 5 DOCUMENTS?

13:57:01 6 A I THINK USING MY COMPUTER, APPLE COMPUTER.

13:57:13 7 Q AND IN ADDITION TO DRAFTING DOCUMENTS RELATED
13:57:18 8 TO THAT TRANSACTION, WERE ANY TAX RETURNS PREPARED?

13:57:21 9 A I DON'T RECALL.

13:57:24 10 MR. FONG: EXCUSE ME, YOUR HONOR. MAY WE
13:57:26 11 HAVE A QUICK SIDE-BAR?

13:57:27 12 THE COURT: SURE.

13:57:27 13 (SIDE-BAR CONFERENCE ON THE RECORD.)

14:04:41 14 THE COURT: WE'RE AT THE BENCH OUTSIDE OF
14:04:41 15 THE PRESENCE OF THE JURY. COUNSEL ARE PRESENT.

14:04:41 16 MR. FONG.

14:04:41 17 MR. FONG: YES, THANK YOU. MY CONCERN IS
14:04:41 18 THAT DESPITE EVERYBODY'S BEST EFFORTS, MR. FUNG IS
14:04:41 19 REFERRING TO MS. LIGHTER AS THE "DEFENDANTS"
14:04:41 20 PLURAL. HE CORRECTS HIMSELF OCCASIONALLY.

14:04:42 21 I'M WONDERING RATHER THAN ME OBJECTING,
14:04:42 22 WHAT I DON'T WANT TO BE CONCERNED ABOUT IS THAT I'M
14:04:42 23 AFRAID HE'S CREATING THE IMPRESSION THAT BESIDES
14:04:42 24 HIMSELF AND MR. LIGHTER, THERE WERE MORE PEOPLE
14:04:42 25 INVOLVED IN THIS AND OF COURSE, IN A CONSPIRACY

14:04:42 1 CASE THAT'S ALWAYS A CONCERN.

14:04:42 2 I THINK WE'RE OKAY BECAUSE THE COURT HAD
14:04:42 3 CLARIFIED MR. FUNG'S TESTIMONY BEFORE, BUT I'M
14:04:42 4 WONDERING IF WE CAN REFER TO MR. LIGHTER AS
14:04:42 5 MR. LIGHTER SO THAT THERE'S NO AMBIGUITY BECAUSE
14:04:42 6 MR. FUNG HAS CONSISTENTLY USED THE WORD
14:04:42 7 "DEFENDANTS," WHEN I THINK HE WAS JUST REFERRING TO
14:04:42 8 MR. LIGHTER.

14:04:42 9 I DON'T THINK HE'S DOING IT
14:04:42 10 INTENTIONALLY.

14:04:42 11 MR. O'REILLY: WELL, YOUR HONOR, IT'S
14:04:42 12 QUITE OBVIOUS IT'S HIS SPEECH PATTERN AND IT'S
14:04:42 13 NOTHING ELSE. CERTAINLY YOU CAN CLARIFY IT UP ON
14:04:42 14 CROSS THAT IT WAS JUST THE TWO OF THEM THAT WERE
14:04:42 15 CHARGED.

14:04:42 16 THERE'S NO IMPUTING BY THE GOVERNMENT
14:04:42 17 THAT THERE ARE SOME OTHER SECRET DEFENDANTS OUT
14:04:42 18 THERE, AND I DON'T WANT TO TELL MR. FUNG YOU'RE
14:04:42 19 SUPPOSED TO TELL IT THIS WAY.

14:04:42 20 THE COURT: WELL, I'LL ASK HIM AND AS YOU
14:04:42 21 RECALL AND YOU NOTED MR. FONG, I ASKED HIM WHEN YOU
14:04:42 22 SAY YOU'RE USING PLURAL, DO YOU MEAN MR. LIGHTER OR
14:04:42 23 WHO DO YOU MEAN? AND HE SAID MR. LIGHTER.

14:04:42 24 AND THEN IN HIS MOST RECENT EXAMINATION
14:04:42 25 HE RESPONDED AGAIN WITH THE PLURAL AND -- BUT THEN

14:04:42 1 IN RESPONSE TO A QUESTION BY MS. WONG ABOUT WHO
14:04:42 2 PREPARED IT, HE SAID HE DID CORRECT IT AND SAY I
14:04:42 3 PARTICIPATED IN IT ALSO.

14:04:42 4 IT SEEMS TO ME TO INDICATE THAT HE KNOWS
14:04:42 5 THE DISTINCTION BETWEEN AT LEAST AS TO HIMSELF AND
14:04:42 6 MR. LIGHTER IN REGARDS TO PREPARING THAT ONE
14:04:42 7 DOCUMENT.

14:04:42 8 I THINK I CLARIFIED IT WHEN I ASKED HIM
14:04:42 9 DO YOU MEAN -- WHAT DO YOU MEAN WHEN YOU SAY
14:04:42 10 "DEFENDANTS" AND HE SAID MR. LIGHTER.

14:04:42 11 MR. FONG: AND MY CONCERN IS THAT THE
14:04:42 12 JURORS WILL BE LEFT WITH THE IMPRESSION THAT, OKAY,
14:04:42 13 ON THAT ONE OCCASION HE MEANT JUST MR. LIGHTER BUT
14:04:42 14 THEN WHEN HE'S USING THE WORD "DEFENDANTS"
14:04:42 15 REPEATEDLY, I'M VERY CONCERNED THAT THE JURORS
14:04:42 16 MIGHT THINK, WELL, CERTAINLY HE'S NOT MEANING
14:04:42 17 HIMSELF AND SO MAYBE THERE'S ANOTHER PERSON OUT
14:04:42 18 THERE.

14:04:42 19 THE COURT: BUT THERE'S NOBODY ELSE IN
14:04:42 20 THE INDICTMENT AND THERE'S NO OTHER -- I DON'T KNOW
14:04:42 21 WHAT THE OVERT ACTS ARE GOING TO BE, BUT THE OTHER
14:04:42 22 I THINK ISSUE IS THAT, YOU KNOW, I THINK IT APPEARS
14:04:42 23 THAT ENGLISH IS NOT HIS FIRST LANGUAGE AND IT WOULD
14:04:42 24 BE MY GUESS AND I DIDN'T ASK HIM THAT.

14:04:42 25 MR. O'REILLY: YOU'RE CORRECT.

14:04:42 1 THE COURT: BUT THAT WOULD BE MY
14:04:42 2 ASSUMPTION, THAT HE DOES HAVE AN INTONATION WHEN HE
14:04:42 3 SPEAKS, AND I KNOW THE COURT REPORTER HAS HAD TO
14:04:42 4 ASK HIM TO REPEAT A COUPLE OF THINGS.

14:04:42 5 MR. FONG: I DON'T THINK THERE'S ANYTHING
14:04:42 6 INTENTIONAL ON THE PART OF MR. FUNG. I THINK IT'S
14:04:42 7 JUST THAT HE BASICALLY CANNOT HELP HIMSELF WHEN HE
14:04:42 8 USES THE WORD "DEFENDANTS" WHEN HE MEANT
14:04:42 9 "DEFENDANT." AND THAT'S MY CONCERN THAT THE JURORS
14:04:42 10 ARE HEARING "DEFENDANTS" REPEATEDLY.

14:04:42 11 THE COURT: WELL, HE DID IN RESPONSE TO A
14:04:42 12 QUESTION AND IT WAS ASKED ABOUT INDICATING A
14:04:42 13 POSSESSIVE, EITHER WHOSE DOCUMENT -- I CAN'T
14:04:42 14 REMEMBER -- HE DID SAY "DEFENDANTS" WITH THE
14:04:42 15 POSSESSIVE, AND I THINK THAT WAS PRETTY CLEAR TO
14:04:43 16 FOLLOW.

14:04:43 17 I DON'T KNOW IF YOU WANT TO ASK HIM
14:04:43 18 ANYTHING DIRECTED "DID YOU MEAN MR. LIGHTER A
14:04:43 19 COUPLE OF TIMES?" AND SEE WHERE THAT GOES. I
14:04:43 20 SUPPOSE THAT CAN BE HELPFUL. I THINK IT'S ON THE
14:04:43 21 RECORD. "AND WHEN I SAY DEFENDANTS, I MEAN
14:04:43 22 MR. LIGHTER."

14:04:43 23 MR. O'REILLY: AND ACTUALLY, YOUR HONOR,
14:04:43 24 AS YOU POINT OUT, THERE'S ONLY ONE PERSON SITTING
14:04:44 25 OVER THERE. THERE'S NOBODY ELSE IN THE INDICTMENT.

14:04:44 1 ALL OF THE OVERT ACTS THAT WERE ALLEGED WERE
14:04:44 2 COMMITTED EITHER BY MR. LIGHTER OR BY MR. FUNG.
14:04:44 3 SO I DON'T THINK THERE'S ANY AMBIGUITY.
14:04:44 4 AND I'M AFRAID THAT ANY ATTEMPT TO
14:04:44 5 CLARIFY IT WITH MR. FUNG IS LIKELY, ACTUALLY, TO
14:04:44 6 EXACERBATE THE PROBLEM.

14:04:44 7 THE COURT: THAT IS UNINTENTIONAL.

14:04:44 8 MR. FONG: I SUSPECT, AND THIS IS A --
14:04:44 9 THAT IF THE QUESTION WAS FRAMED AS TO MR. LIGHTER
14:04:44 10 AS OPPOSED TO DID THE DEFENDANT. I UNDERSTAND THAT
14:04:44 11 MR. FUNG IT'S UNDERSTANDABLY A HUMAN REACTION TO
14:04:44 12 ASK A QUESTION WITH THE DEFENDANT WITH AN ANSWER
14:04:44 13 THE DEFENDANTS AND THAT'S JUST SIMPLY --

14:04:44 14 THE COURT: EXCUSE ME TO INTERRUPT.
14:04:44 15 YOU'RE ASKING THAT COUNSEL SAY WE PREPARED THIS AND
14:04:44 16 IF HE SAYS THE DEFENDANTS, THEN THEY SAY DO YOU
14:04:44 17 MEAN MR. LIGHTER?

14:04:44 18 MR. FONG: OR SIMPLY, YOU KNOW WHAT, WE
14:04:44 19 DON'T EVEN HAVE TO SAY MR. LIGHTER. IT'S THE
14:04:44 20 PROSECUTION'S PREROGATIVE HOW THEY WANT TO REFER TO
14:04:44 21 MR. LIGHTER. THEY HAVE EVERY RIGHT TO REFER TO
14:04:44 22 MR. LIGHTER AS A DEFENDANT BUT PERHAPS WE CAN SAY
14:04:44 23 DEFENDANT LIGHTER.

14:04:44 24 I JUST DON'T WANT -- IT SEEMS THAT THIS
14:04:44 25 IS SOMETHING THAT I CERTAINLY DON'T NEED TO WORRY

14:04:44 1 ABOUT.

14:04:44 2 THE COURT: WELL, FROM A TACTICAL POINT
14:04:44 3 OF VIEW IT'S NONE OF MY BUSINESS. YOU KNOW, THE
14:04:44 4 ALTERNATIVE IS TO KEEP YOUR CLIENT'S NAME KEEP
14:04:44 5 BEING MENTIONED AS THE CULPABLE PARTY WHICH
14:04:44 6 SOMETIMES --

14:04:44 7 MR. FONG: WELL, ACTUALLY.

14:04:44 8 THE COURT: IT COULD SEND THE WRONG
14:04:45 9 MESSAGE.

14:04:45 10 MR. FONG: WELL, I'M WILLING TO LIVE WITH
14:04:45 11 THAT. I WOULD RATHER HEAR THE NAME "LIGHTER" AS
14:04:45 12 OPPOSED TO "DEFENDANT."

14:04:45 13 IF HE WERE JUST SAYING DEFENDANT
14:04:45 14 SINGULAR, THEN THAT'S THE GOVERNMENT'S PREROGATIVE,
14:04:45 15 I DON'T CARE.

14:04:45 16 THE COURT: WELL, IT'S ONE WHERE YOU ASK
14:04:45 17 HIM A COUPLE OF TIMES TO CORRECT THAT.

14:04:45 18 MS. WONG: SURE.

14:04:45 19 THE COURT: AND I ASKED THE QUESTION
14:04:45 20 ALREADY. I THINK IT'S PRETTY CLEAR TO THE JURY,
14:04:45 21 BUT YOU'RE RIGHT, AND HE KEEPS SAYING THAT AND IF
14:04:45 22 HE ASKED A QUESTION AND IF YOU ASK THE FOLLOW-UP
14:04:45 23 QUESTION DO YOU MEAN MR. LIGHTER? I THINK THAT
14:04:45 24 WILL SEND IT HOME AND IT WILL CLEAR IT UP.

14:04:45 25 MR. O'REILLY: WHAT I WOULD SUGGEST IS

14:04:45 1 THAT ARE YOU WILLING -- WHEN YOU USE THE PLURAL, IS
14:04:45 2 THAT -- DO YOU MEAN JUST ONE PERSON?

14:04:45 3 THE COURT: YEAH.

14:04:45 4 MR. FONG: THAT WOULD BE GREAT.

14:04:45 5 THE COURT: ON ANOTHER TOPIC, I HAVE ON
14:04:45 6 MY DESK HERE DEFENSE EXHIBIT A. IS THAT THE
14:04:45 7 DOCUMENT, THE THICK DOCUMENT?

14:04:45 8 MR. FONG: YES.

14:04:45 9 THE COURT: OKAY. THANK YOU.

14:04:45 10 (SIDE-BAR CONFERENCE CONCLUDED.)

14:04:48 11 THE COURT: MS. WONG.

14:04:48 12 MS. WONG: THANK YOU, YOUR HONOR.

14:04:49 13 Q MR. FUNG, BEFORE WE TALK ABOUT SOME OF THE
14:04:52 14 DOCUMENTS THAT WERE -- THAT YOU HELPED DRAFT OR
14:04:55 15 WERE DRAFTED DURING THAT MEETING, I JUST WANT TO
14:04:58 16 CLEAR SOMETHING UP.

14:04:59 17 YOU'VE SAID THE WORD "DEFENDANTS" A FEW
14:05:02 18 TIMES WHEN I'VE ASKED YOU ABOUT THE DEFENDANT.

14:05:04 19 DO YOU MEAN MR. LIGHTER?

14:05:06 20 A YES.

14:05:08 21 Q AND, FOR EXAMPLE, AT THIS MEETING WITH THE
14:05:11 22 BOURDIERS, WAS ANYONE ELSE PRESENT OTHER THAN YOU
14:05:17 23 AND DEFENDANT LIGHTER OTHER THAN MINH HA TRINH AND
14:05:22 24 MR. BOURDIER?

14:05:24 25 A THAT'S ALL.

14:05:24 1 Q AND WAS ANYONE ELSE INVOLVED AT LEAST TO YOUR
14:05:33 2 KNOWLEDGE TO HELP THE BOURDIERS WITH THEIR N.T.S.
14:05:38 3 TAX ISSUES, OTHER THAN DEFENDANT LIGHTER AND
14:05:41 4 YOURSELF?

14:05:47 5 A THAT'S ALL I KNOW OF.

14:05:48 6 Q NOW, LET'S TALK A LITTLE BIT ABOUT THE
14:05:50 7 DOCUMENTS THAT WERE CREATED DURING THIS MEETING.

14:05:52 8 I'M GOING TO SHOW YOU WHAT HAS BEEN
14:05:54 9 MARKED FOR IDENTIFICATION PURPOSES AS GOVERNMENT'S
14:05:56 10 EXHIBIT 15.

14:06:09 11 DO YOU RECOGNIZE THAT DOCUMENT?

14:06:10 12 A YES.

14:06:10 13 Q AND WHAT IS IT?

14:06:14 14 A IT'S A MUTUAL ASSIGNMENT OF SHARES.

14:06:17 15 Q AND WAS THAT ONE OF THE DOCUMENTS THAT WAS
14:06:20 16 CREATED DURING YOUR MEETING WITH THE BOURDIERS AND
14:06:24 17 THE DEFENDANT?

14:06:24 18 A YES.

14:06:25 19 Q AND YOU WERE PRESENT WHEN IT WAS CREATED?

14:06:27 20 A YES.

14:06:27 21 Q AND THIS IS A FAIR AND ACCURATE COPY OF THAT
14:06:30 22 DOCUMENT?

14:06:30 23 A YES.

14:06:31 24 MS. WONG: AT THIS TIME THE GOVERNMENT
14:06:35 25 MOVES GOVERNMENT'S EXHIBIT 115 INTO EVIDENCE.

14:06:38 1 MR. FONG: NO OBJECTION.

14:06:40 2 THE COURT: IT'S RECEIVED WITHOUT
14:06:42 3 OBJECTION.

14:06:59 4 (WHEREUPON, GOVERNMENT'S EXHIBIT NUMBER
14:06:59 5 115, HAVING BEEN PREVIOUSLY MARKED FOR
14:06:59 6 IDENTIFICATION, WAS ADMITTED INTO
14:06:59 7 EVIDENCE.)

14:06:59 8 BY MS. WONG:

14:07:00 9 Q AND WHAT I'D LIKE TO FOCUS ON AT THE TOP HERE
14:07:02 10 IS THE SECOND FULL PARAGRAPH, THE WHEREAS. AND
14:07:12 11 FOCUS THE WITNESS ON ALL OF THE PARTS THERE.

14:07:32 12 NOW, MR. FUNG, WAS THIS DOCUMENT SUPPOSED
14:07:34 13 TO MEMORIALIZE THE TRANSACTION BETWEEN THE
14:07:36 14 DEFENDANT'S CORPORATION AND THE NEW CORPORATION
14:07:39 15 THAT WAS CREATED FOR MR. BOURDIER?

14:07:42 16 A YES.

14:07:42 17 Q AND WHAT EXACTLY DID THAT TRANSACTION INVOLVE?

14:07:47 18 A SOME TYPE OF A EXCHANGE OF SHARES OF THE
14:07:54 19 CORPORATION.

14:07:54 20 Q AND WHAT WAS GOING TO BE THE RESULT OF THAT
14:07:56 21 EXCHANGE OF SHARES FOR THE BOURDIERS' ASSETS?

14:08:02 22 A THAT THE SHAREHOLDER'S INTEREST IS BEING
14:08:28 23 TRANSFERRED.

14:08:28 24 Q AND WHEN YOU SAY "THE SHAREHOLDER'S INTEREST,"
14:08:31 25 SO WHO WOULD END UP WITH THE SHARES OF THE

14:08:38 1 BOURDIER'S NEWLY FORMED CORRUPTION?

14:08:41 2 A THAT HCHC.

14:08:45 3 Q AND IS THAT THE DEFENDANT'S CORPORATION, HCHC?

14:08:49 4 A YES.

14:08:49 5 Q AND THEN WHAT WOULD THE BOURDIERS RECEIVE IN
14:08:52 6 RETURN FOR GIVING THE DEFENDANT'S CORPORATION THOSE
14:08:57 7 SHARES?

14:08:57 8 A THAT BOURDIERS CORPORATION WINDS UP WITH THE
14:09:03 9 OTHER CORPORATION SHARES.

14:09:05 10 Q AND SO SHARES IN MR. LIGHTER'S CORPORATION OR
14:09:10 11 MR. LIGHTER'S CORPORATION?

14:09:11 12 A YES.

14:09:11 13 Q AND DID THE DEFENDANT BRING WITH HIM ANY, IF
14:09:16 14 YOU RECALL, ANY BALANCE SHEETS OR FINANCIAL
14:09:20 15 STATEMENTS SHOWING HOW MUCH HCHC WAS WORTH?

14:09:24 16 A NOT THAT I REMEMBER.

14:09:26 17 Q LET'S MOVE ON TO PAGE 2 -- OR ONE MORE THING
14:09:31 18 OPENING THE FIRST PAGE.

14:09:32 19 LET'S GO UP TO THE FIRST PARAGRAPH.

14:09:39 20 NOW, HERE IT SAYS THIS ASSIGNMENT IS MADE
14:09:42 21 ON THE 19TH DAY OF OCTOBER 2003.

14:09:44 22 WAS THAT THE DATE OR AROUND THE DATE THAT
14:09:48 23 YOU AND THE DEFENDANT MET WITH THE BOURDIERS?

14:09:51 24 A YES.

14:09:51 25 Q NOW, LET'S GO ON TO THE SECOND PAGE OF THIS

14:09:55 1
14:10:03 2
14:10:06 3
14:10:07 4
14:10:07 5
14:10:26 6
14:10:28 7
14:10:30 8
14:10:32 9
14:10:42 10
14:10:45 11
14:10:47 12
14:10:47 13
14:10:51 14
14:10:56 15
14:10:56 16
14:10:59 17
14:11:02 18
14:11:02 19
14:11:06 20
14:11:09 21
14:11:10 22
14:11:11 23
14:11:13 24
14:11:13 25

DOCUMENT. IS THIS ONE OF THE SHARES -- THE
CERTIFICATES THAT WAS DRAWN UP TO DOCUMENT THE
TRANSFER OF SHARES?

A YES.

Q AND LET'S GO TO THE NEXT PAGE.

AND ALTHOUGH IT'S SOMEWHAT DIFFICULT TO
READ, MR. FUNG, WHAT IS THE NAME OF THE CORPORATION
THAT APPEARS UNDER THE EAGLE HERE?

A HEART MIND CORPORATION.

Q AND WAS THAT THE CORPORATION THAT YOU AND THE
DEFENDANT HELPED THE BOURDIERS CREATE?

A YES.

Q AND WHO IS RECEIVING, ACCORDING TO THIS
CERTIFICATE, SHARES IN MR. BOURDIER'S NEW
CORPORATION?

A HCHC.

Q OR ACCORDING TO THE CERTIFICATE, WHAT DOES IT
SAY ON HERE?

A I'M SORRY?

MR. FONG: OBJECTION, LEADING.

THE COURT: EXCUSE ME?

MR. FONG: OBJECTION, LEADING.

THE COURT: OVERRULED. YOU CAN ANSWER
THE QUESTION.

THE WITNESS: ERIC LIGHTER.

14:11:16 1 BY MS. WONG:

14:11:16 2 Q AND LET'S GO NOW TO THE NEXT PAGE OF THE
14:11:18 3 EXHIBIT.

14:11:24 4 WAS THIS ANOTHER DOCUMENT THAT WAS DRAWN
14:11:26 5 UP DURING THAT MEETING?

14:11:28 6 A YES.

14:11:29 7 Q AND IS THAT MR. BOURDIER'S SIGNATURE THERE AT
14:11:38 8 THE BOTTOM?

14:11:38 9 A YES.

14:11:38 10 Q AND LET'S FINALLY GO TO THE LAST PAGE OF THIS
14:11:42 11 EXHIBIT.

14:11:43 12 AND I KNOW IT'S SLIGHTLY DIFFICULT TO
14:11:45 13 READ, MR. FUNG, BUT COULD YOU TELL THE JURY WHAT IS
14:11:48 14 THE NAME OF THE CORPORATION THAT APPEARS UNDERNEATH
14:11:51 15 THE EAGLE?

14:11:51 16 A HAWAIIN COLONY HOTEL CORPORATION.

14:12:06 17 Q AND WHO IS, ACCORDING TO THIS CERTIFICATE,
14:12:09 18 RECEIVING SHARES IN HAWAIIN COLONY HOTEL
14:12:15 19 CORPORATION OR HCHC?

14:12:17 20 A JEAN-PAUL BOURDIER AND MINH HA TRINH.

14:12:20 21 Q NOW, IN ADDITION TO DRAWING UP PAPERWORK THAT
14:12:26 22 DOCUMENTED THIS TRANSACTION, I WANT TO SHOW YOU
14:12:30 23 WHAT HAS BEEN MARKED AS GOVERNMENT'S -- WHAT IS
14:12:33 24 ALREADY IN EVIDENCE AS GOVERNMENT'S EXHIBIT 118.

14:12:36 25 AND IF WE CAN GO TO THE TOP OF THIS TAX

14:12:47 1 RETURN, THIS CORPORATE TAX RETURN.

14:12:51 2 NOW, DO YOU RECOGNIZE -- IS THIS THE
14:12:53 3 HEART MIND CORPORATION THAT WAS CREATED DURING THAT
14:12:56 4 MEETING WITH MR. BOURDIER ON OCTOBER 19TH, 2003?

14:13:00 5 A YES.

14:13:01 6 Q AND IT SAYS HERE THAT THE CORPORATION NEXT TO
14:13:04 7 THE NAME IT SAYS 1990 TO 2002.

14:13:08 8 AND IT ALSO SAYS NEAR THAT DATE OF
14:13:11 9 INCORPORATION 12-9-1990. NOW, TO YOUR KNOWLEDGE
14:13:19 10 HAD HEART MIND CORPORATION EXISTED BEFORE YOUR
14:13:21 11 MEETING WITH JEAN-PAUL BOURDIER AND MINH HA TRINH?

14:13:25 12 A NO.

14:13:25 13 Q AND DID THE DEFENDANT EXPLAIN WHY THEY COULD
14:13:29 14 WRITE THAT IT WAS INCORPORATED IN 1990 THEN?

14:13:33 15 A YES.

14:13:33 16 Q AND WHAT DID HE SAY?

14:13:34 17 A SOMETHING RELATED TO DE FACTO.

14:13:37 18 Q AND IF WE LOOK AT THE TOP ALSO, UNDERNEATH
14:13:41 19 U.S. CORPORATION INCOME TAX RETURN IT SAYS FOR
14:13:45 20 CALENDAR YEAR 2002 OR TAX YEAR BEGINNING IN
14:13:53 21 12-9-1919 ENDING 12-31-2002. DO YOU KNOW HOW THAT
14:14:00 22 CAME TO BE THERE, MR. FUNG?

14:14:02 23 A THE DEFENDANT.

14:14:02 24 Q AND NOW, HAD YOU EVER BEFORE THIS, HAD YOU
14:14:07 25 EVER SEEN A TAX RETURN, OTHER THAN YOUR RETURNS, I

14:14:10 1 SUPPOSE, HAD YOU SEEN A TAX RETURN THAT SPAN SO
14:14:12 2 MANY YEARS? WHAT IS IT, 12 YEARS?

14:14:14 3 A NO.

14:14:15 4 Q AND BASED ON YOUR TRAINING IN PREPARING TAX
14:14:17 5 RETURNS, WHAT WERE YOU TAUGHT ABOUT PREPARING AND
14:14:20 6 PUTTING ON ONE TAX RETURN MORE THAN ONE --

14:14:23 7 MR. FONG: OBJECTION, FOUNDATION.

14:14:24 8 THE COURT: DO YOU WANT TO LAY A
14:14:26 9 FOUNDATION ABOUT HIS TRAINING?

14:14:29 10 BY MS. WONG:

14:14:29 11 Q MR. FUNG, HAVE YOU RECEIVED TRAINING IN
14:14:31 12 PREPARING TAX RETURNS?

14:14:32 13 A ONLY WHEN I TOOK A CLASS WITH H & R BLOCK AND
14:14:41 14 I TRIED TO LEARN HOW TO DO MY OWN TAX RETURNS.

14:14:44 15 Q AND DURING THAT CLASS, DID THEY TEACH YOU
14:14:46 16 ABOUT HOW TO PREPARE RETURNS?

14:14:48 17 A NOT CORPORATION, ONLY PERSONAL TAX RETURNS.

14:14:56 18 Q AND DID THEY TEACH YOU ABOUT I.R.S.
14:14:58 19 REGULATIONS DURING THAT TRAINING?

14:15:01 20 A NOT REALLY.

14:15:05 21 Q NOW, WHEN YOU WERE PREPARING RETURNS FOR
14:15:09 22 NATIONAL TRUST SERVICES, DID YOU ALSO RECEIVE SOME
14:15:12 23 TRAINING FROM ROY FRITTS AND RICK PRESCOTT?

14:15:17 24 A YES.

14:15:17 25 Q AND WHEN YOU WERE PREPARING RETURNS BEFORE FOR

14:15:20 1 NATIONAL TRUST SERVICES, DID YOU EVER PUT MORE THAN
14:15:22 2 ONE TAX YEAR ON ONE YEAR?

14:15:25 3 A NO.

14:15:26 4 Q AND WHEN YOU WERE PREPARING INDIVIDUAL TAX
14:15:28 5 RETURNS, DID YOU EVER PUT MORE THAN ONE TAX YEAR ON
14:15:31 6 A RETURN?

14:15:31 7 A NO.

14:15:31 8 Q IN THE CASE OF THIS TAX RETURN, GOVERNMENT'S
14:15:34 9 EXHIBIT 118, WHO, IF ANYONE, SAID IT WAS OKAY TO
14:15:40 10 PUT MORE THAN ONE TAX YEAR ON THE TAX RETURN?

14:15:42 11 A THE DEFENDANTS.

14:15:43 12 Q AND WHEN YOU SAY "THE DEFENDANTS," DO YOU MEAN
14:15:47 13 THE DEFENDANT LIGHTER?

14:15:48 14 A YES.

14:15:48 15 Q AND THERE WAS NO ONE ELSE WHO SAID THAT DURING
14:15:51 16 THAT MEETING, RIGHT?

14:15:52 17 A NO.

14:15:52 18 Q NOW, IF WE GO DOWN TO THE BOTTOM OF THIS TAX
14:15:58 19 RETURN -- AND INCLUDE THE STAMP, PLEASE.

14:16:05 20 ACCORDING TO THE I.R.S. STAMP, WHEN WAS
14:16:08 21 THIS TAX RETURN RECEIVED BY THE I.R.S.?

14:16:10 22 A NOVEMBER 9TH, 2003.

14:16:12 23 Q AND ON THE BOTTOM WHOSE SIGNATURE APPEARS IN
14:16:19 24 THE PREPARER'S BOX?

14:16:21 25 A THE DEFENDANT'S.

14:16:29 1 Q AND WHAT IS WRITTEN ABOVE HIS SIGNATURE?

14:16:32 2 A HAWAIIN COLONY HOTEL CORPORATION.

14:16:40 3 Q AND IS THAT THE CORPORATION THAT BELONGED TO
14:16:41 4 THE DEFENDANT?

14:16:42 5 A YES.

14:16:42 6 Q NOW, IN ADDITION TO SETTING UP THIS
14:16:45 7 TRANSACTION OR DOCUMENTS TO MEMORIALIZE THIS
14:16:48 8 TRANSACTION WHEN YOU AND THE DEFENDANT WERE AT THE
14:16:50 9 BOURDIERS, DO YOU KNOW IF THE DEFENDANT TOOK ANY
14:16:54 10 INVENTORY AT THE BOURDIERS WHILE HE WAS THERE?

14:16:56 11 A NO.

14:16:57 12 Q NOW, LET'S GO TO THE SIXTH PAGE THAT SHOWS THE
14:17:12 13 HEART CORPORATION SHAREHOLDERS. AND JUST BLOW THAT
14:17:16 14 UP.

14:17:22 15 NOW, ACCORDING TO THIS PAGE OF THE TAX
14:17:24 16 RETURN, MR. FUNG, WHO HAS SHARES IN THE HEART
14:17:27 17 CORPORATION?

14:17:27 18 A JEAN-PAUL BOURDIER AND MINH HA TRINH HAVE --
14:17:38 19 OWN 900 SHARES AND THE HAWAIIN COLONY HOTEL
14:17:43 20 CORPORATION HAD 100 SHARES.

14:17:44 21 Q LET'S NOW GO TO THE NEXT PAGE. IF WE CAN JUST
14:17:49 22 BLOW UP EVERYTHING THAT IS WRITTEN THERE.

14:17:55 23 NOW, UNDER HEART CORPORATION, THE LIST OF
14:17:59 24 SUBSIDIARIES, DO YOU RECOGNIZE THE NAMES OF
14:18:02 25 COMPANIES THAT APPEAR AS SUBSIDIARIES HERE?

14:18:06 1
14:18:06 2
14:18:08 3
14:18:11 4
14:18:11 5
14:18:29 6
14:18:32 7
14:18:32 8
14:18:36 9
14:18:46 10
14:18:46 11
14:18:50 12
14:18:56 13
14:19:00 14
14:19:03 15
14:19:04 16
14:19:07 17
14:19:12 18
14:19:12 19
14:19:12 20
14:19:13 21
14:19:14 22
14:19:16 23
14:19:17 24
14:19:17 25

A YES.

Q AND WHAT ARE THOSE?

A IT'S ALL OF THE TRUST THAT THE BOURDIER SET UP
WITH NATIONAL TRUST SERVICES.

Q AND SO WHAT IS THIS DOCUMENT SHOWING?

A IT'S SHOWING ALL OF THE TRUSTS UNDER THE HEART
CORPORATION.

Q AND IF YOU KNOW, WERE THE BOURDIERS' ASSETS
HELD BY THEIR N.T.S. TRUST?

A YES.

Q AND LET'S GO TO THE NEXT PAGE OF GOVERNMENT'S
EXHIBIT 118.

NOW, WHAT DOES -- WHAT IS THIS -- THE
FIRST LINE OF THIS PAGE OF THE TAX RETURN SHOW IT
TO BE, MR. FUNG?

A INVENTORY OF HEART CORPORATION.

Q AND IT INCLUDES THINGS LIKE PAINTINGS AND
DRAWINGS?

A YES.

Q AND PHOTOGRAPHS?

A YES.

Q AND THESE WERE SOME OF THE ASSETS OF THE
BOURDIERS?

A YES.

Q LET'S GO TO THE NEXT PAGE OF THE RETURN.

14:19:26 1

NOW -- THIS IS THE RIGHT PAGE.

14:19:32 2

NOW, MR. FUNG, DO YOU RECOGNIZE THIS

14:19:34 3

DOCUMENT?

14:19:34 4

A NO.

14:19:36 5

Q BUT DO YOU RECOGNIZE THE NAME THAT APPEARS

14:19:39 6

HERE?

14:19:40 7

A YES.

14:19:40 8

Q AND WHAT DOES THIS DOCUMENT PURPORT TO BE?

14:19:45 9

A AMENDED BY LAWS OF HEART MIND CORPORATION.

14:19:49 10

Q NOW, MR. FUNG, WERE YOU INVOLVED IN PREPARING

14:19:52 11

THIS PARTICULAR DOCUMENT?

14:19:54 12

A NO.

14:19:54 13

Q HAD YOU EVER PREPARED ANY SORT OF AMENDED

14:20:00 14

BYLAWS FOR THE BOURDIERS?

14:20:01 15

A NO.

14:20:01 16

Q OR FOR ANYONE ELSE?

14:20:03 17

A NO.

14:20:04 18

Q LET'S GO TO THE SECOND TO THE LAST PAGE OF

14:20:08 19

THIS. IT'S JUST GOING TO BE THE LAST PAGE OF THE

14:20:17 20

ARTICLES OF INCORPORATION.

14:20:19 21

NOW, DO YOU RECOGNIZE THESE SIGNATURES

14:20:21 22

HERE UNDER THE APPROVED AND ADOPTED?

14:20:23 23

A YES.

14:20:24 24

Q NOW, ACTUALLY CAN YOU JUST MOVE IT UP SO YOU

14:20:34 25

CAN SEE WHERE IT'S ALLEGEDLY APPROVED AND ADOPTED.

14:20:42 1 NOW, MR. FUNG, AT LEAST TO YOUR KNOWLEDGE
14:20:44 2 WERE MR. BOURDIER AND MINH HA TRINH IN MEDFORD,
14:20:53 3 OREGON ON OCTOBER 23RD, 2003?

14:20:57 4 A NO.

14:20:57 5 Q BUT WERE ANY ARTICLES OF INCORPORATION FILED
14:21:00 6 ON BEHALF OF HEART MIND CORPORATION IN MEDFORD,
14:21:04 7 OREGON?

14:21:04 8 A NO. I'M SORRY. WOULD YOU REPEAT THE
14:21:08 9 QUESTION?

14:21:08 10 Q MY QUESTION WAS FOR THIS NEW CORPORATION,
14:21:10 11 HEART MIND CORPORATION, WERE ANY DOCUMENTS FILED
14:21:13 12 WITH THE SECRETARY OF STATE OF OREGON?

14:21:16 13 A YES.

14:21:16 14 Q AND WERE YOU INVOLVED IN FILING THAT DOCUMENT?

14:21:18 15 A YES.

14:21:18 16 Q I'D LIKE TO SHOW YOU WHAT HAS BEEN MARKED AS
14:21:24 17 GOVERNMENT'S EXHIBIT 116.

14:21:35 18 LET'S FOCUS FIRST ON THE FIRST PAGE OF
14:21:37 19 116.

14:21:39 20 WERE YOU INVOLVED IN FILING THAT
14:21:41 21 DOCUMENT?

14:21:41 22 A YES.

14:21:41 23 Q AND IS IT A TRUE AND ACCURATE COPY OF THE
14:21:44 24 DOCUMENT THAT YOU FILED WITH THE OREGON SECRETARY
14:21:47 25 OF STATE?

14:21:47 1 A YES.

14:21:47 2 Q AND NOW, LET'S GO TO THE SECOND PAGE OF 116.

14:21:55 3 AND IT'S ACTUALLY ALREADY IN EVIDENCE SO
14:21:58 4 WHAT WE'LL DO IS WE'LL JUST PUBLISH IT TO THE JURY
14:22:01 5 AT THIS STAGE. AND I APOLOGIZE. AND WE'LL GO WITH
14:22:04 6 THE FIRST PAGE, FIRST.

14:22:05 7 IF YOU CAN BLOW UP JUST THE PART THAT
14:22:08 8 SHOWS THE NAME OF THE CORPORATION AND ALSO THE
14:22:10 9 REGISTERED AGENT.

14:22:25 10 MR. FUNG, WHO TOLD YOU TO FILE THIS
14:22:28 11 BUSINESS INCORPORATION IN OREGON FOR HEART MIND
14:22:33 12 CORPORATION?

14:22:33 13 A THE DEFENDANT.

14:22:36 14 Q AND HERE YOU'RE LISTED AS THE REGISTERED
14:22:39 15 AGENT. DID THE DEFENDANT EXPLAIN TO YOU WHY YOU
14:22:42 16 WERE TO BE THE REGISTERED AGENT FOR THIS
14:22:44 17 CORPORATION?

14:22:44 18 A YES.

14:22:46 19 Q AND WHAT DID HE SAY?

14:22:47 20 A I'M THE RESIDENT OF THE STATE OF OREGON.

14:22:51 21 Q AND DID THE DEFENDANT TELL YOU WHAT, IF
14:22:53 22 ANYTHING, WHAT YOU WERE SUPPOSED TO DO AS A
14:22:56 23 REGISTERED AGENT OF THIS CORPORATION?

14:22:58 24 A NO.

14:22:58 25 Q NOW, WHO ARE LISTED AS THE INCORPORATORS DOWN

14:23:03 1 IN THE LATER PART OF THIS DOCUMENT?

14:23:05 2 A JEAN-PAUL BOURDIER AND MINH HA TRINH.

14:23:20 3 Q AND DID YOU FILE THIS DOCUMENT AFTER THE
14:23:22 4 MEETING, AFTER THE MEETING THAT YOU HAD WITH THE
14:23:24 5 BOURDIERS AND THE DEFENDANT?

14:23:25 6 A YES.

14:23:25 7 Q NOW, LET'S GO TO THE SECOND PAGE OF EXHIBIT --
14:23:30 8 OF THIS EXHIBIT.

14:23:31 9 NOW, MR. FUNG, DID YOU FILE THIS DOCUMENT
14:23:37 10 FOR HEART CORPORATION?

14:23:38 11 A NO.

14:23:38 12 Q AND DO YOU KNOW WHO DID?

14:23:40 13 A JEAN-PAUL BOURDIER.

14:23:42 14 Q AND NOW, WAS THIS FILED AT THE SAME TIME AS
14:23:46 15 THE DOCUMENT OF INCORPORATION FOR HEART MIND
14:23:52 16 CORPORATION?

14:23:52 17 A NO.

14:23:52 18 Q WAS IT FILED BEFORE OR AFTER?

14:23:55 19 A AFTER.

14:23:55 20 Q NOW, DID THERE COME A TIME WHEN YOU LEARNED
14:24:06 21 THAT THE BOURDIERS WERE BEING AUDITED BY THE
14:24:08 22 I.R.S.?

14:24:09 23 A I DON'T RECALL.

14:24:14 24 Q AT SOME POINT WERE YOU CONTACTED ABOUT THE,
14:24:17 25 THE MORTGAGE DEDUCTIONS THAT WERE TAKEN ON THE

14:24:20 1 RETURNS THAT YOU PREPARED?

14:24:21 2 A YES.

14:24:21 3 Q AND WHO CONTACTED YOU?

14:24:23 4 A I THINK JEAN-PAUL BOURDIER, HE TOLD ME THAT.
14:24:31 5 HE TOLD ME ABOUT BEING AUDITED.

14:24:33 6 Q AND SO THE TRUST RETURNS THAT YOU PREPARED
14:24:35 7 WERE BEING EXAMINED BY THE I.R.S., IS THAT FAIR TO
14:24:38 8 SAY?

14:24:38 9 A I'M NOT SURE EXACTLY. IT WAS A LONG TIME AGO,
14:24:45 10 AND I THINK SOME RETURNS WERE BEING AUDITED.

14:24:47 11 Q AND THEY WERE MR. BOURDIER'S RETURNS?

14:24:49 12 A YES.

14:24:49 13 Q AND WHEN MR. BOURDIER CONTACTED YOU ABOUT,
14:24:53 14 ABOUT THE AUDIT, DID HE ASK YOU TO DO ANYTHING?

14:24:56 15 A I DON'T RECALL.

14:25:05 16 Q LET ME SHOW YOU WHAT HAS BEEN MARKED FOR
14:25:09 17 IDENTIFICATION PURPOSES AS GOVERNMENT'S
14:25:13 18 EXHIBIT 113.

14:25:20 19 MR. FUNG, DO YOU RECOGNIZE GOVERNMENT'S
14:25:23 20 EXHIBIT 113?

14:25:24 21 A YES.

14:25:24 22 Q AND WHAT IS IT?

14:25:25 23 A IT'S A MORTGAGE INTEREST STATEMENTS FOR 2001.

14:25:38 24 Q AND DID YOU PREPARE THAT DOCUMENT?

14:25:41 25 A YES.

14:25:41 1 Q AND IS IT A FAIR AND ACCURATE COPY OF THE
14:25:43 2 DOCUMENT THAT YOU PREPARED?

14:25:44 3 A YES.

14:25:45 4 MS. WONG: AT THIS TIME THE GOVERNMENT
14:25:47 5 WOULD OFFER GOVERNMENT'S EXHIBIT 113 INTO EVIDENCE.

14:25:49 6 MR. FONG: NO OBJECTION.

14:25:50 7 THE COURT: IT'S RECEIVED WITHOUT
14:25:51 8 OBJECTION.

14:25:52 9 (WHEREUPON, GOVERNMENT'S EXHIBIT NUMBER
14:25:52 10 113, HAVING BEEN PREVIOUSLY MARKED FOR
14:25:52 11 IDENTIFICATION, WAS ADMITTED INTO
14:25:55 12 EVIDENCE.)

14:25:55 13 BY MS. WONG:

14:25:56 14 Q NOW, MR. FUNG, I'D LIKE YOU TO TAKE A LOOK AT
14:25:59 15 GOVERNMENT'S EXHIBIT 113.

14:26:06 16 NOW, MG TRUST, IS THAT ONE OF
14:26:08 17 MR. BOURDIER'S TRUST?

14:26:10 18 A YES.

14:26:10 19 Q AND IS THIS, THIS FORM DOCUMENTING THE
14:26:16 20 MORTGAGE THAT WAS GIVEN -- THAT WAS BETWEEN
14:26:18 21 MR. BOURDIER AND ONE OF THE TRUSTS THAT HE OWNED?

14:26:20 22 A YES.

14:26:20 23 Q AND WAS THIS -- DID YOU PREPARE THIS DOCUMENT
14:26:26 24 FOR MR. BOURDIER AFTER HE WAS BEING AUDITED?

14:26:29 25 A I DON'T REMEMBER IF IT WAS BEFORE OR AFTER,

14:26:38 1 BUT HE ASKED ME TO PREPARE THAT FORM.

14:26:41 2 Q AND DID HE TELL YOU WHY HE WANTED YOU TO
14:26:43 3 PREPARE THAT FORM?

14:26:44 4 A THAT HE NEEDED EVIDENCE OF IT FOR THE TRUSTEE
14:26:54 5 TO ISSUE THE 1098, FORM 1098 TO HIM.

14:26:58 6 Q NOW, WE HAVE LOOKED THROUGH SOME OF THE
14:27:00 7 RETURNS THAT YOU HAVE PREPARED, MR. FUNG.

14:27:02 8 IS IT FAIR TO SAY THAT YOU DIDN'T
14:27:04 9 TYPICALLY PREPARE A FORM 1098 FOR YOUR N.T.S.
14:27:11 10 CLIENTS?

14:27:12 11 A CORRECT.

14:27:12 12 Q BUT IN THIS CASE YOU DID?

14:27:14 13 A YES.

14:27:15 14 Q AND IT WAS AFTER MR. BOURDIER SAID HE NEEDED
14:27:17 15 EVIDENCE?

14:27:17 16 A YES.

14:27:18 17 Q I'D LIKE TO TURN NOW TO GOVERNMENT'S
14:27:20 18 EXHIBIT 126.

14:27:22 19 AND I'D LIKE TO GO TO PAGE 86 OF THAT
14:27:24 20 EXHIBIT.

14:27:43 21 NOW, MR. FUNG, THIS IS PART OF THE --
14:27:46 22 THIS DOCUMENT, THIS PROMISSORY NOTE, WHAT IS THE
14:27:48 23 STATE -- THE STAMP SAYS IN TERMS OF WHEN IT WAS
14:27:53 24 RECEIVED BY THE I.R.S.?

14:27:54 25 A MAY 27TH, 2004.

14:28:03 1 Q NOW, THAT'S AFTER YOU AND THE DEFENDANT HAD
14:28:05 2 MET WITH MR. BOURDIER IN HIS HOME IN BERKELEY,
14:28:08 3 CALIFORNIA?

14:28:08 4 A YES.

14:28:08 5 Q AND DID YOU PREPARE THIS DOCUMENT?

14:28:10 6 A NO.

14:28:12 7 Q DO YOU KNOW HOW THIS DOCUMENT CAME TO BE
14:28:17 8 PREPARED?

14:28:17 9 A THE DEFENDANT PREPARED IT.

14:28:26 10 Q AND HOW DO YOU KNOW THAT?

14:28:30 11 MR. FONG: I'M GOING TO OBJECT IF HE'S
14:28:34 12 GOING TO ANSWER IN A HEARSAY STATEMENT.

14:28:36 13 THE COURT: SAY THAT AGAIN.

14:28:37 14 MR. FONG: I'M GOING TO OBJECT IF
14:28:39 15 MR. FUNG IS GOING TO ANSWER IN A HEARSAY STATEMENT.

14:28:48 16 THE COURT: WE DON'T KNOW THAT YET.
14:28:51 17 OVERRULED. YOU CAN ANSWER THE QUESTION, SIR.

14:29:03 18 THE WITNESS: WOULD YOU REPEAT THE
14:29:04 19 QUESTION.

14:29:04 20 BY MS. WONG:

14:29:05 21 Q I ASKED YOU HOW DID YOU KNOW THAT IT WAS THE
14:29:07 22 DEFENDANT WHO PREPARED THIS DOCUMENT?

14:29:08 23 A BECAUSE I REMEMBER SOME KIND OF CD BEING, YOU
14:29:14 24 KNOW, WAS BROUGHT BY THE DEFENDANT AND PUT IN THE
14:29:20 25 COMPUTER AND THIS TYPE OF DOCUMENT AND THE TEMPLATE

14:29:25 1
14:29:27 2
14:29:38 3
14:29:39 4
14:29:43 5
14:29:44 6
14:29:54 7
14:29:57 8
14:29:59 9
14:30:01 10
14:30:01 11
14:30:01 12
14:30:04 13
14:30:08 14
14:30:11 15
14:30:15 16
14:30:16 17
14:30:25 18
14:30:28 19
14:30:30 20
14:30:31 21
14:30:32 22
14:30:35 23
14:30:37 24
14:30:38 25

AND YOU TYPE THE CORRECT INFORMATION ON IT.

Q AND LET'S GO TO THE NEXT PAGE OF THIS RETURN.

WHAT DOES THIS DOCUMENT SAY IT IS,
MR. FUNG, AFTER THE -- BELOW THE AFTER RECORDING
RETURN BY MAIL BLOCK?

A I'M SORRY. I DON'T KNOW THE QUESTION.

Q I WAS ASKING, SO THIS DOCUMENT SAYS IT IS A
REAL PROPERTY MORTGAGE.

DO YOU SEE WHERE IT SAYS THAT ON THE
DOCUMENT?

A YES.

Q BUT THIS HEART CORPORATION THAT IS SUPPOSED TO
BE PART OF THIS, THIS MORTGAGE, WHEN DID THAT
COME -- DID THAT COME INTO BEING BEFORE OR AFTER
YOUR MEETING WITH THE DEFENDANT AND THE BOURDIERS
IN OCTOBER OF 2003?

A I DON'T RECOGNIZE THIS DOCUMENT, BUT I CAN SEE
IT WAS MAY 27TH, 2004.

Q SO THAT WAS WHEN THIS DOCUMENT WAS RECEIVED BY
THE I.R.S.

BUT I'M ASKING ACTUALLY RIGHT NOW ABOUT
THE HEART CORPORATION. THAT CORPORATION DIDN'T
EXIST BEFORE YOUR MEETING WITH THE BOURDIERS AND
THE DEFENDANT, RIGHT?

A THAT'S CORRECT.

14:30:39 1 Q AND THAT MEETING WAS IN OCTOBER OF 2003,
14:30:41 2 RIGHT?

14:30:41 3 A THAT'S CORRECT. RIGHT.

14:30:41 4 Q AND NOW ACCORDING TO THIS DOCUMENT, IF WE
14:30:44 5 FOCUS ON THE FIRST PARAGRAPH, IT SAYS THAT ON THIS
14:30:47 6 2ND DAY OF JANUARY 1998. DO YOU SEE WHERE I'M
14:30:50 7 READING FROM?

14:30:51 8 A YES.

14:30:51 9 Q BUT AS LEAST AS FAR AS YOU KNOW DID HEART
14:31:01 10 CORPORATION EXIST IN 1998?

14:31:03 11 A NO.

14:31:03 12 Q AND YOU NEVER PREPARED RETURNS FOR
14:31:05 13 MR. BOURDIER IN 1998 FOR HEART CORPORATION, DID
14:31:10 14 YOU?

14:31:10 15 A NO.

14:31:10 16 Q AND IF WE CAN GO TWO PAGES LATER. NOW,
14:31:20 17 MR. FUNG, DO YOU KNOW HOW THIS -- DID YOU PREPARE
14:31:22 18 THIS DOCUMENT?

14:31:22 19 A NO.

14:31:22 20 Q AND DO YOU KNOW WHO DID?

14:31:24 21 A I DON'T KNOW.

14:31:24 22 Q I'D LIKE TO GO THREE PAGES LATER AND BLOW THAT
14:31:39 23 UP.

14:31:43 24 NOW, MR. FUNG, IS THIS THE SAME DOCUMENT
14:31:46 25 THAT WE WERE JUST LOOKING AT AS GOVERNMENT'S

14:31:48 1 EXHIBIT 113?

14:31:49 2 A YES.

14:31:50 3 Q AND THIS IS THE FORM THAT WAS -- THAT YOU
14:31:54 4 PREPARED?

14:31:54 5 A YES.

14:31:54 6 Q AND, NOW, DO YOU KNOW HOW MUCH THE BOURDIERS
14:32:07 7 PAID THE DEFENDANT FOR HIS HELP?

14:32:09 8 A IN THE RANGE OF 10,000 TO 15,000. SOMETHING
14:32:17 9 LIKE THAT.

14:32:18 10 Q AND DID YOU RECEIVE ANY MONEY FOR REFERRING
14:32:26 11 THE BOURDIERS TO THE DEFENDANT?

14:32:27 12 A YES.

14:32:27 13 Q AND HOW MUCH DID YOU RECEIVE?

14:32:28 14 A I DON'T RECALL. IT WAS MAYBE A THOUSAND OR
14:32:38 15 TWO.

14:32:39 16 Q AND DID YOU RECEIVE THAT MONEY -- WHEN DID YOU
14:32:41 17 RECEIVE THAT MONEY, IF YOU RECALL?

14:32:42 18 A AFTER THE DEFENDANT CAME OVER I RECEIVED THE
14:32:45 19 MONEY.

14:32:45 20 Q AND DID HE THEN PAY YOU IN FRONT OF THE
14:32:48 21 BOURDIERS?

14:32:48 22 A NO.

14:32:48 23 Q TO YOUR KNOWLEDGE, DID THE BOURDIERS KNOW THAT
14:32:51 24 YOU HAD RECEIVED ANY MONEY FOR REFERRING THEM?

14:32:53 25 A NO.

14:32:54 1 Q AND NOW AS PART OF YOUR MEETING WITH THE
14:32:58 2 BOURDIERS AND THE DEFENDANT, WAS THERE ANY
14:33:02 3 DISCUSSION -- WAS THE PURPOSE OF YOUR MEETING TO DO
14:33:04 4 ANY REAL ESTATE BUSINESS?

14:33:05 5 A NO.

14:33:05 6 Q AND/OR TO DO ANYTHING TO DO ANY SORT OF
14:33:09 7 OFFERINGS THROUGH THE S.E.C.?

14:33:11 8 A NO.

14:33:12 9 Q AND, UM, WITH REGARDS TO THE -- TO -- WITH
14:33:21 10 REGARDS TO THESE TRANSACTIONS, THE TRANSACTIONS
14:33:23 11 WITH THE BOURDIERS, IF YOU HAD ANY QUESTIONS, WHO
14:33:26 12 DID YOU TALK TO ABOUT WHAT YOU WERE SUPPOSED TO DO?

14:33:28 13 A THE DEFENDANTS.

14:33:32 14 Q AND WHEN YOU SAY "THE DEFENDANTS," YOU MEAN
14:33:35 15 ERIC LIGHTER?

14:33:36 16 A YES.

14:33:36 17 Q AS PART OF THIS TRANSACTION, WERE THE
14:33:42 18 BOURDIERS, TO THE EXTENT THAT YOU KNOW, WERE THEY
14:33:46 19 TRYING TO DO HOTEL OFFERINGS IN HAWAII OR INVEST IN
14:33:52 20 HOTELS IN HAWAII?

14:33:53 21 A I DON'T RECALL.

14:33:54 22 Q AND WAS THAT THE REASON THAT YOU GAVE
14:33:56 23 MR. BOURDIER THE DEFENDANT'S NUMBER AND CONTACT
14:34:00 24 INFORMATION?

14:34:01 25 A NO.

14:34:01 1
14:34:06 2
14:34:09 3
14:34:14 4
14:34:15 5
14:34:18 6
14:34:20 7
14:34:21 8
14:34:23 9
14:34:26 10
14:34:26 11
14:34:28 12
14:34:30 13
14:34:30 14
14:34:31 15
14:34:32 16
14:34:36 17
14:34:39 18
14:34:40 19
14:34:42 20
14:34:45 21
14:34:45 22
14:34:49 23
14:34:55 24
14:34:56 25

Q WHAT -- WHY DID YOU GIVE MR. BOURDIER THE
DEFENDANT'S CONTACT INFORMATION?

A TO DEAL WITH THE NATIONAL TRUST SERVICES TAX
RETURN AND AUDIT AND THINGS LIKE THAT.

Q SO IS IT FAIR TO SAY TO DEAL WITH TAXES AND
THE I.R.S.?

A YES.

Q AND, NOW, WAS IT ONLY ON YOUR ADVICE THAT THE
BOURDIERS DECIDED TO GO FORWARD WITH THE PLAN?

A NO.

MR. FONG: OBJECTION, SPECULATION.

THE COURT: SUSTAINED.

BY MS. WONG:

Q WERE YOU PRESENT --

MR. FONG: MOVE TO STRIKE.

THE COURT: IF THERE WAS AN ANSWER, IT'S
STRICKEN. THE RESPONSE IS STRICKEN.

BY MS. WONG:

Q WERE YOU PRESENT WHEN THE BOURDIERS DECIDED TO
GO FORWARD WITH THE DEFENDANT'S PLAN?

A YES.

Q AND AT THAT TIME, WHO WAS TELLING THEM, IF
ANYONE, THAT THE PLAN WAS A GOOD IDEA AND IT WOULD
SOLVE THEIR TAX PROBLEMS?

A THE DEFENDANT FORMULATED A PLAN AND THE

BOURDIERS, THEY ALL AGREE ON IT.

Q AT THIS TIME, MR. FUNG, I WANT TO STOP TALKING ABOUT MR. BOURDIER AND WHAT HE DID, AND I WANT TO TALK ABOUT SOME OTHER PEOPLE.

I WANT TO KNOW WHETHER YOU RECOGNIZE THESE NAMES: DR. IRWIN GOOTNICK AND DR. SUSAN GOOTNICK?

A YES.

Q AND DID YOU, DID YOU PREPARE N.T.S. TAX RETURNS FOR THEM?

A YES.

Q AND WERE THEY ALSO MEMBERS OF N.T.S.?

A YES.

Q I'D LIKE TO JUST TAKE A BRIEF LOOK AT SOME OF THOSE TAX RETURNS THAT YOU PREPARED.

CAN WE SHOW MR. FUNG AND THE JURY WHAT HAS BEEN ALREADY ENTERED INTO EVIDENCE AS GOVERNMENT'S EXHIBIT 167.

NOW, MR. FUNG, IS THIS ONE OF THE RETURNS THAT YOU PREPARED FOR THE GOOTNICKS?

A YES.

Q AND WHAT IS THE NAME OF THE TRUST SHOWN ON THIS RETURN?

A FULL DIMENSION TRUST.

Q AND WAS THAT ONE OF THE GOOTNICKS' TRUSTS?

14:36:41 1
14:36:42 2
14:36:45 3
14:36:47 4
14:36:49 5
14:36:50 6
14:36:55 7
14:36:58 8
14:36:58 9
14:37:07 10
14:37:20 11
14:37:23 12
14:37:24 13
14:37:25 14
14:37:26 15
14:37:27 16
14:37:30 17
14:37:32 18
14:37:33 19
14:37:49 20
14:37:52 21
14:37:53 22
14:37:55 23
14:37:58 24
14:37:58 25

A YES.

Q AND LET'S GO DOWN SO THAT MR. FUNG AND THE
JURY CAN SEE THIS STAMP.

ACCORDING TO THIS STAMP, WHEN WAS THIS
RETURN RECEIVED BY THE I.R.S., MR. FUNG?

A JULY 23RD, 2002.

Q AND IS THAT YOUR SIGNATURE DOWN ON THE BOTTOM?

A YES.

Q AND LET'S GO TO GOVERNMENT'S EXHIBIT 168,
WHICH IS ALREADY IN EVIDENCE.

NOW, MR. FUNG, IS THIS ANOTHER ONE OF THE
RETURNS THAT YOU PREPARED FOR THE GOOTNICKS?

A YES.

Q AND WHAT IS THE NAME OF THIS TRUST?

A GOOTNICK FAMILY TRUST.

Q AND WAS THIS ANOTHER ONE OF THEIR TRUSTS THAT
THEY BOUGHT THROUGH N.T.S.?

A YES.

Q LET'S GO TO GOVERNMENT'S EXHIBIT 169.

NOW, MR. FUNG, WHAT IS THE NAME OF THE
TRUST LISTED ON THIS RETURN?

A J AND J TRUST.

Q AND IS THIS ANOTHER ONE OF THE GOOTNICK'S
TRUST?

A YES.

14:37:58 1 Q AND DID YOU PREPARE THIS RETURN?

14:38:00 2 A YES.

14:38:00 3 Q LET'S GO TO GOVERNMENT'S EXHIBIT 170 OR, YES,
14:38:10 4 170.

14:38:25 5 NOW, MR. FUNG, IS THIS ANOTHER ONE OF THE
14:38:27 6 GOOTNICKS N.T.S.'S TRUSTS?

14:38:34 7 A NO.

14:38:34 8 Q AND WHAT IS THIS?

14:38:39 9 A THE GOOTNICKS HAVE A CORPORATION.

14:38:43 10 Q AND WAS THIS A CORPORATION THAT WAS CREATED
14:38:45 11 AFTER -- THAT WAS CREATED -- DO YOU KNOW HOW THIS
14:38:51 12 CORPORATION WAS CREATED OR WHY IT SAYS INC. ON THIS
14:38:54 13 RETURN?

14:38:55 14 A THIS IS GOOTNICKS' CORPORATION HAS BEEN IN
14:39:03 15 EXISTENCE FOR A WHILE.

14:39:04 16 Q NOW, YOU WERE -- YOU PREPARED THIS RETURN?

14:39:07 17 A YES.

14:39:07 18 Q AND THIS IS ONE OF THE CORPORATE RETURNS?

14:39:11 19 A THAT'S CORRECT.

14:39:11 20 Q BUT YOU HADN'T PREPARED CORPORATE RETURNS FOR
14:39:14 21 GOOTNICK IN THE PAST, HAD YOU?

14:39:15 22 A NO.

14:39:16 23 Q SO THIS WAS -- AND IF YOU CAN -- AND ACCORDING
14:39:29 24 TO THE STAMP, WHEN WAS THIS RECEIVED BY THE I.R.S.?

14:39:34 25 A JULY 23RD, 2002.

14:39:42 1 Q NOW, DID THERE COME A TIME WHEN YOU SPOKE TO
14:39:45 2 THE GOOTNICKS ABOUT THE I.R.S. INVESTIGATION ABOUT
14:39:48 3 NATIONAL TRUST SERVICES?

14:39:49 4 A YES.

14:39:49 5 Q AND WHAT, IF ANYTHING, DID YOU TELL OR DID YOU
14:39:52 6 TALK TO THE GOOTNICKS ABOUT DURING THAT
14:39:55 7 CONVERSATION?

14:39:56 8 A DR. GOOTNICK WAS VERY CONCERNED ABOUT THE
14:40:04 9 TRUST THAT WAS SET UP BY NATIONAL TRUST SERVICES
14:40:09 10 WHETHER THEY'RE SCAM TRUSTS SO VALID TRUSTS AND HE
14:40:13 11 WANTED TO, YOU KNOW, FIND OUT, YOU KNOW, AND I TOLD
14:40:19 12 HIM THAT I DON'T PROVIDE LEGAL ADVICE. GO SEE AN
14:40:25 13 ATTORNEY.

14:40:25 14 Q AND DID YOU -- NOW, YOU ADVISED DR. GOOTNICK
14:40:28 15 HE COULD GO SEE AN ATTORNEY.

14:40:29 16 AT ANY TIME -- AT SOME POINT DID YOU GIVE
14:40:31 17 THE DEFENDANT'S NAME TO DR. GOOTNICK?

14:40:36 18 A YES.

14:40:36 19 Q AND WHAT SORT OF CONVERSATION -- DID YOU HAVE
14:40:44 20 A CONVERSATION ABOUT THE DEFENDANT AND WHAT THE
14:40:46 21 DEFENDANT COULD DO WITH DR. GOOTNICK?

14:40:49 22 A DR. GOOTNICK ASKED ME, YOU KNOW, AT THAT TIME
14:40:56 23 I WAS TRUSTEE FOR HIS TRUSTS SO HE CONTACTED ME ALL
14:41:02 24 OF THE TIME AND COMMUNICATED. SO AT SOME POINT IN
14:41:07 25 TIME I TOLD HIM I WAS HAVING THE DEFENDANT TO HELP

14:41:10 1 ME OUT.

14:41:10 2 Q AND WHEN YOU SAY THAT THE DEFENDANT WAS
14:41:13 3 HELPING YOU OUT, IS IT FAIR TO SAY THAT YOU TOLD
14:41:15 4 DR. GOOTNICK THAT -- ABOUT YOUR TAX PROBLEMS AND
14:41:19 5 WHAT THE DEFENDANT WAS DOING FOR YOU?

14:41:20 6 A YES.

14:41:21 7 Q AND AFTER YOU TOLD DR. GOOTNICK THAT, HOW DID
14:41:26 8 DR. GOOTNICK RESPOND?

14:41:28 9 A THAT HE WANTED TO CONTACT.

14:41:34 10 Q AND DID YOU PROVIDE THAT CONTACT INFORMATION?

14:41:36 11 A YES.

14:41:36 12 Q AND DID THERE COME A TIME WHEN YOU HAD LEARNED
14:41:40 13 WHETHER OR NOT DR. GOOTNICK HAD GOTTEN IN TOUCH
14:41:43 14 WITH THE DEFENDANT?

14:41:43 15 A YES.

14:41:43 16 Q AND HOW DID YOU LEARN THAT?

14:41:46 17 A THAT I NEED TO GO AND TO MEET UP WITH
14:41:51 18 DR. GOOTNICK TO PICK UP THE MONEY.

14:41:52 19 Q AND FROM WHOM DID YOU LEARN THAT YOU HAD TO GO
14:41:56 20 AND PICK UP THE MONEY?

14:41:57 21 A EITHER THE DEFENDANT CONTACTED ME OR
14:42:05 22 DR. GOOTNICK HIMSELF CONTACTED ME.

14:42:06 23 Q SO IS IT -- DURING THAT TIME WERE YOU IN
14:42:10 24 CONTACT WITH THE DEFENDANT BY PHONE OR E-MAIL OR
14:42:13 25 SOME FORM?

14:42:13 1

A PHONE.

14:42:15 2

Q AND YOU WOULD EACH CALL EACH OTHER?

14:42:20 3

A YES.

14:42:20 4

Q NOW, WHEN YOU WENT -- WHEN YOU WERE CONTACTED

14:42:24 5

TO GO PICK UP THE MONEY, DID YOU, IN FACT, GO DO

14:42:27 6

THAT?

14:42:28 7

A YES.

14:42:28 8

Q AND WHERE DID YOU GO TO MEET DR. GOOTNICK?

14:42:33 9

A TO THE RESTAURANT.

14:42:35 10

Q AND WHERE WAS THAT RESTAURANT LOCATED?

14:42:37 11

A IT'S THE MAX'S RESTAURANT IN SAN RAFAEL I

14:42:45 12

THINK.

14:42:45 13

Q AND WHERE WERE YOU LIVING AT THE TIME?

14:42:47 14

A MEDFORD, OREGON.

14:42:49 15

Q SO HOW DID YOU GET TO MAX'S RESTAURANT IN SAN

14:42:54 16

RAFAEL?

14:42:54 17

A DROVE.

14:42:54 18

Q SO YOU DROVE ALL OF THE WAY DOWN TO MAX'S

14:42:57 19

RESTAURANT. AND WHAT HAPPENED WHEN YOU GOT TO

14:42:59 20

MAX'S RESTAURANT?

14:43:00 21

A DR. GOOTNICK GAVE ME A PAPER BAG.

14:43:09 22

Q AND WHAT WAS IN THE PAPER BAG?

14:43:10 23

A CURRENCY.

14:43:11 24

Q AND DO YOU KNOW HOW MUCH?

14:43:13 25

A NO.

14:43:13 1 Q AND WHAT DID YOU DO WITH THE PAPER BAG?

14:43:22 2 A I RECEIVED IT.

14:43:23 3 Q AND WHERE DID YOU PUT IT?

14:43:24 4 A IN THE BACK SEAT OF MY CAR ON THE FLOOR.

14:43:26 5 Q AND DID THERE COME A TIME WHEN YOU LEARNED HOW
14:43:33 6 MUCH MONEY WAS AT LEAST SUPPOSED TO BE IN THAT
14:43:35 7 PAPER BAG?

14:43:36 8 A YES.

14:43:37 9 Q AND HOW MUCH MONEY WAS SUPPOSED TO BE IN THAT
14:43:39 10 PAPER BAG?

14:43:40 11 A I CANNOT RECALL. PROBABLY \$10,000.

14:43:47 12 Q AND AFTER -- AND IN EXCHANGE FOR THAT PAPER
14:43:51 13 BAG, DID YOU GIVE ANYTHING TO DR. GOOTNICK?

14:43:53 14 A YES. YES.

14:43:55 15 Q AND WHAT DID YOU GIVE HIM?

14:43:57 16 A RECEIPTS.

14:43:57 17 Q SHOWING YOU WHAT HAS BEEN MARKED AS
14:43:59 18 GOVERNMENT'S EXHIBIT 112. DO YOU RECOGNIZE THAT
14:44:11 19 DOCUMENT?

14:44:11 20 A YES.

14:44:11 21 Q AND WHAT IS IT?

14:44:12 22 A IT'S THE RECEIPT.

14:44:13 23 Q IS THAT THE RECEIPT THAT YOU GAVE TO
14:44:15 24 DR. GOOTNICK?

14:44:15 25 A YES.

14:44:15 1 Q AND IS IT A FAIR AND ACCURATE COPY OF THAT
14:44:18 2 RECEIPT?

14:44:19 3 A YES.

14:44:20 4 MS. WONG: AT THIS TIME THE GOVERNMENT
14:44:21 5 WOULD MOVE INTO EVIDENCE GOVERNMENT'S EXHIBIT 12.

14:44:27 6 MR. FONG: NO OBJECTION, YOUR HONOR.

14:44:29 7 THE COURT: IT'S RECEIVED WITHOUT
14:44:30 8 OBJECTION.

14:44:30 9 (WHEREUPON, GOVERNMENT'S EXHIBIT NUMBER 12,
14:44:30 10 HAVING BEEN PREVIOUSLY MARKED FOR
14:44:30 11 IDENTIFICATION, WAS ADMITTED INTO
14:44:42 12 EVIDENCE.)

14:44:42 13 THE COURT: THIS IS 112?

14:44:50 14 MS. WONG: THIS IS 12.

14:44:51 15 THE COURT: OKAY. THANK YOU. NOW,
14:44:53 16 EXHIBIT 12 IS NOW ON THE SCREEN.

14:44:55 17 BY MS. WONG:

14:44:56 18 Q NOW, THE DATE THAT IS SHOWN HERE, MARCH 24TH,
14:44:59 19 2004, IS THAT WHEN YOU MET DR. GOOTNICK IN THE
14:45:02 20 PARKING LOT?

14:45:02 21 A IN THE RESTAURANT.

14:45:03 22 Q IN THE RESTAURANT?

14:45:05 23 A YES.

14:45:05 24 Q AND THIS IS YOUR SIGNATURE ON HERE?

14:45:12 25 A YES.

14:45:12 1 Q AND AFTER YOU GOT THE MONEY FROM DR. GOOTNICK,
14:45:15 2 THE PAPER BAG FROM DR. GOOTNICK AND PUT IT ON THE
14:45:19 3 FLOOR, WHERE DID YOU GO?

14:45:21 4 A I DON'T RECALL.

14:45:27 5 Q AND DID THERE COME A TIME WHEN THE DEFENDANT
14:45:30 6 FLEW OVER FROM HAWAII?

14:45:32 7 A YES.

14:45:32 8 Q AND WAS THAT AFTER YOU RECEIVED THE MONEY IN
14:45:35 9 THE PAPER BAG?

14:45:37 10 A YES.

14:45:37 11 Q AND DID YOU MEET THE DEFENDANT WHEN HE FLEW
14:45:48 12 OVER?

14:45:48 13 A YES.

14:45:48 14 Q AND WHERE DID YOU MEET HIM?

14:45:52 15 A THE AIRPORT.

14:45:52 16 Q AND WHERE DID YOU AND THE DEFENDANT GO AFTER
14:45:55 17 YOU MET HIM AT THE AIRPORT?

14:45:56 18 A TO DR. GOOTNICK'S OFFICE.

14:46:09 19 Q AND WHAT, IF ANYTHING, WAS DISCUSSED AT
14:46:12 20 DR. GOOTNICK'S OFFICE?

14:46:12 21 A I DID NOT GO IN.

14:46:13 22 Q SO IS IT FAIR TO SAY THAT YOU DROPPED THE
14:46:16 23 DEFENDANT OFF?

14:46:17 24 A I THINK HE HAD A RENTAL CAR.

14:46:18 25 Q AND WHAT WAS YOUR UNDERSTANDING OF WHY, TO THE

14:46:22 1 EXTENT YOU KNOW, WHAT WAS YOUR UNDERSTANDING OF WHY
14:46:24 2 THE DEFENDANT WAS COMING OVER FROM HAWAII TO MEET
14:46:27 3 WITH DR. GOOTNICK?

14:46:28 4 A TO HELP DR. GOOTNICK'S TRUST, YOU KNOW,
14:46:39 5 AUDITS, THINGS LIKE THAT.

14:46:40 6 Q AND WHEN YOU SAY TRUSTS AND AUDITS, IS THAT
14:46:43 7 HAVING TO DO WITH NATIONAL TRUST SERVICES?

14:46:45 8 A YES.

14:46:45 9 Q AND DID YOU EVER DISCUSS EXACTLY WHAT THE
14:46:49 10 DEFENDANT PLANNED TO DO WITH DR. GOOTNICK?

14:46:53 11 A YES.

14:46:53 12 Q AND WHO DID YOU DISCUSS THAT WITH?

14:46:54 13 A THE DEFENDANT.

14:46:57 14 Q AND WHAT DID HE SAY HE WAS PLANNING TO DO WITH
14:47:00 15 DR. GOOTNICK?

14:47:01 16 A SIMILAR TO CREATING CORPORATIONS AND ASSETS
14:47:13 17 TRANSFER.

14:47:17 18 Q AND DO YOU KNOW IF DR. GOOTNICK WENT THROUGH
14:47:19 19 WITH THE PLAN AND CREATED THE CORPORATION AND THE
14:47:24 20 ASSET TRANSFER?

14:47:25 21 A YES, I HEARD OF THAT.

14:47:28 22 Q AND WHO DID YOU HEAR IT FROM?

14:47:30 23 A THE DEFENDANT.

14:47:30 24 Q AND DID THE DEFENDANT GIVE YOU ANY
14:47:32 25 INSTRUCTIONS AFTER DR. GOOTNICK DECIDED TO GO

14:47:35 1 THROUGH WITH THE PLAN?

14:47:36 2 A CAN YOU REPEAT THE QUESTION.

14:47:39 3 Q DID YOU DO ANYTHING TO HELP THE DEFENDANT
14:47:42 4 AFTER DR. GOOTNICK DECIDED TO GO THROUGH WITH THE
14:47:45 5 PLAN?

14:47:46 6 A YES.

14:47:46 7 Q AND WHAT DID YOU DO?

14:47:47 8 A HE ASKED ME FOR AN APPRAISER.

14:47:54 9 Q I BEG YOUR PARDON?

14:47:55 10 A HE ASKED ME FOR AN APPRAISER, A REAL ESTATE
14:47:59 11 APPRAISER.

14:48:00 12 Q AND DID YOU PROVIDE HIM?

14:48:02 13 A YES.

14:48:02 14 Q AND DID THE DEFENDANT EXPLAIN TO YOU WHY HE
14:48:04 15 NEEDED THE NAME OF A REAL ESTATE APPRAISER?

14:48:06 16 A YES.

14:48:07 17 Q AND WHAT DID HE TELL YOU HE NEEDED THE
14:48:09 18 APPRAISER'S NAME FOR?

14:48:10 19 A TO IDENTIFY THE VALUE OF SOME OF THE ASSETS.

14:48:17 20 Q AND DO YOU KNOW WHAT ASSETS THE DEFENDANT WAS
14:48:19 21 REFERRING TO?

14:48:19 22 A HIS PROPERTY IN OREGON.

14:48:37 23 Q AND SO IT WAS AN APPRAISER THAT NEEDED TO BE
14:48:40 24 FOUND IN OREGON?

14:48:41 25 A YES.

14:48:46 1 MS. WONG: YOUR HONOR, I DON'T KNOW WHEN
14:48:48 2 THE COURT WOULD LIKE TO TAKE THE AFTERNOON BREAK --

14:48:51 3 THE COURT: WELL, I THOUGHT WE WOULD DO
14:48:54 4 IT AT 3:00. SO IF YOU HAVE MORE, WE SHOULD GO
14:48:59 5 AHEAD.

14:48:59 6 MS. WONG: I DO. JUST -- CAN I HAVE THE
14:49:01 7 COURT'S INDULGENCE FOR A MOMENT?

14:49:02 8 THE COURT: SURE. FOLKS, IF YOU WANT TO
14:49:04 9 STAND, PLEASE FEEL FREE.

14:49:35 10 (PAUSE IN PROCEEDINGS.)

14:49:36 11 MS. WONG: THANK YOU, YOUR HONOR.

14:49:36 12 THE COURT: YOU'RE WELCOME.

14:49:38 13 BY MS. WONG:

14:49:39 14 Q NOW, MR. FUNG, DO YOU KNOW, AS PART OF THE
14:49:41 15 PLAN AND THE AGREEMENT BETWEEN DR. GOOTNICK AND THE
14:49:44 16 DEFENDANT, WHETHER OR NOT ANY NEW TAX RETURNS WERE
14:49:46 17 PREPARED AND FILED?

14:49:47 18 A I DON'T KNOW.

14:49:48 19 Q WERE YOU INVOLVED IN THE PREPARATION OF ANY
14:49:51 20 SUCH RETURNS?

14:49:52 21 A NO.

14:49:53 22 Q NOW, DID THERE COME A TIME WHEN YOU HEARD --
14:50:01 23 WHEN YOU LEARNED THAT DR. GOOTNICK DIDN'T WANT TO
14:50:03 24 GO FORWARD WITH THE PLAN?

14:50:08 25 A YES.

14:50:08 1 Q AND HOW DID YOU LEARN THAT?

14:50:09 2 A I THINK I LEARNED IT FROM BOTH THE DEFENDANT
14:50:21 3 AND DR. GOOTNICK.

14:50:22 4 Q AND DID YOU DISCUSS WITH THE DEFENDANT HOW
14:50:24 5 DR. GOOTNICK WANTED TO CANCEL THE PLAN?

14:50:27 6 A I'M SORRY. COULD YOU REPEAT THE QUESTION.

14:50:36 7 Q DID YOU HAVE DISCUSSIONS WITH THE DEFENDANT
14:50:38 8 ABOUT THE FACT THAT DR. GOOTNICK DIDN'T WANT TO GO
14:50:41 9 FORWARD WITH THE PLAN ANYMORE?

14:50:42 10 A YES.

14:50:43 11 Q AND WHAT, IF ANYTHING, DID THE DEFENDANT TELL
14:50:47 12 YOU DURING THOSE DISCUSSIONS?

14:50:49 13 A THE DEFENDANT TOLD ME THAT WHILE DR. GOOTNICK
14:50:57 14 WAS IN HAWAII THEY MET UP; THAT THE DEFENDANT FIND
14:51:01 15 OUT THAT DR. GOOTNICK HAD NOT COMMUNICATED WITH HIS
14:51:07 16 WIFE ABOUT WHAT THEY WERE DOING AND DR. GOOTNICK'S
14:51:21 17 WIFE WAS REALLY UPSET.

14:51:21 18 Q AND AS A RESULT OF THIS, DID THE DEFENDANT
14:51:24 19 TELL YOU WHAT DR. GOOTNICK WAS TRYING TO DO TO GET
14:51:27 20 OUT OF THE PLAN?

14:51:27 21 A YES.

14:51:27 22 Q AND WHAT DID THE DEFENDANT SAY TO YOU?

14:51:29 23 A THAT THEY ARE GOING TO HIRE AN ATTORNEY TO
14:51:34 24 DISSOLVE THE TRANSACTION.

14:51:36 25 Q AND WHEN YOU SAY "THEY," YOU MEAN THE

14:51:41 1 GOOTNICKS?

14:51:42 2 A YES.

14:51:42 3 Q AND DID THE DEFENDANT SAY TO YOU HOW HE FELT
14:51:46 4 ABOUT THAT, THE FACT THAT THE GOOTNICKS WERE GOING
14:51:48 5 TO DISSOLVE THE TRANSACTIONS?

14:51:49 6 A I DON'T RECALL.

14:51:50 7 Q DID THE DEFENDANT -- DID THERE COME A TIME
14:51:54 8 WHEN THE DEFENDANT ASKED FOR YOUR HELP WITH RESPECT
14:51:58 9 TO THE GOOTNICKS?

14:51:59 10 A YES.

14:52:01 11 Q AND WHAT DID THE DEFENDANT ASK FOR YOUR HELP
14:52:06 12 IN DOING?

14:52:06 13 A THE DEFENDANT CALLED ME UP AND INSIST THAT I
14:52:13 14 NEED TO CALL GOOTNICK.

14:52:15 15 Q AND EVEN BEFORE THAT, MR. FUNG, HAD THE
14:52:18 16 DEFENDANT ASKED YOU TO PREPARE DOCUMENTS WITH
14:52:23 17 REGARDS TO THE GOOTNICKS?

14:52:25 18 MR. FONG: OBJECTION, LEADING.

14:52:26 19 THE COURT: SUSTAINED.

14:52:30 20 BY MS. WONG:

14:52:30 21 Q MR. FUNG, I'M GOING TO ASK YOU IF YOU
14:52:32 22 RECOGNIZE WHAT HAS BEEN MARKED FOR IDENTIFICATION
14:52:35 23 PURPOSES AS GOVERNMENT'S EXHIBIT 158.

14:54:10 24 (PAUSE IN PROCEEDINGS.)

14:54:11 25 BY MS. WONG:

14:54:12 1 Q MR. FUNG, DO YOU RECOGNIZE GOVERNMENT'S
14:54:14 2 EXHIBIT 158?

14:54:14 3 A YES.

14:54:15 4 Q AND WHAT IS IT?

14:54:15 5 A IT'S A LETTER THAT I SENT TO THE DEFENDANT.

14:54:18 6 Q AND WHO ACTUALLY PREPARED THAT LETTER?

14:54:22 7 A THE DEFENDANT.

14:54:23 8 Q AND IS THAT A FAIR AND ACCURATE COPY OF THE
14:54:28 9 LETTER THAT YOU SENT TO THE DEFENDANT THAT WAS
14:54:29 10 PREPARED BY THE DEFENDANT?

14:54:30 11 A YES, YES.

14:54:36 12 MS. WONG: AT THIS TIME THE GOVERNMENT
14:54:37 13 WOULD OFFER EXHIBIT 158 INTO EVIDENCE, YOUR HONOR.

14:54:39 14 MR. FONG: NO OBJECTION, YOUR HONOR.

14:54:41 15 THE COURT: IT'S RECEIVED WITHOUT
14:54:42 16 OBJECTION.

14:54:42 17 (WHEREUPON, GOVERNMENT'S EXHIBIT NUMBER
14:54:42 18 158, HAVING BEEN PREVIOUSLY MARKED FOR
14:54:42 19 IDENTIFICATION, WAS ADMITTED INTO
14:54:53 20 EVIDENCE.)

14:54:53 21 BY MS. WONG:

14:54:53 22 Q NOW, MR. FUNG, YOU JUST SAID THAT THIS LETTER
14:54:56 23 WAS PREPARED BY THE DEFENDANT BUT THEN YOU SENT IT
14:54:59 24 TO THE DEFENDANT?

14:55:00 25 A RIGHT, CORRECT.

14:55:02 1 Q COULD YOU EXPLAIN TO THE JURY WHY YOU SENT THE
14:55:05 2 DEFENDANT A LETTER THAT HE PREPARED?

14:55:07 3 A TO DOCUMENT SOME TYPE OF INFORMATION.

14:55:13 4 Q AND WHAT WAS THE PURPOSE OF -- AND ACCORDING
14:55:17 5 TO THIS LETTER, IF WE LOOK AT THE TOP IT SAYS
14:55:19 6 REGARDING DRS. IRWIN AND SUSAN GOOTNICK.

14:55:24 7 AND SO WHAT SORT OF INFORMATION -- DID
14:55:27 8 THE DEFENDANT TELL YOU WHAT SORT OF INFORMATION YOU
14:55:30 9 WERE SUPPOSED TO BE DOCUMENTING IN THIS LETTER?

14:55:33 10 A THAT THE DEFENDANT TOLD ME THAT THE GOOTNICKS
14:55:39 11 HAD A LOT OF UNREPORTED INCOME.

14:55:41 12 Q AND NOW BY THIS TIME HAD THE -- BY THE DATE OF
14:55:45 13 THIS LETTER, AUGUST 17TH OF 2005, HAD THE GOOTNICKS
14:55:51 14 ALREADY TRIED TO PULL OUT OF THE PLAN OR PULL OUT
14:55:53 15 OF THE PLAN WITH THE DEFENDANT?

14:55:54 16 A YES.

14:55:54 17 Q AND AS PART OF PULLING OUT OF THE PLAN WITH
14:56:00 18 THE DEFENDANT, DO YOU KNOW IF ANY LAWSUIT WAS
14:56:02 19 FILED?

14:56:03 20 A YES.

14:56:03 21 Q AND WHO, IF YOU KNOW, FILED THAT LAWSUIT?

14:56:06 22 A THE GOOTNICKS.

14:56:09 23 Q AND WHO DID THEY FILE IT AGAINST?

14:56:10 24 A THE DEFENDANT.

14:56:11 25 Q AND WHAT, IF YOU KNOW, DID THAT LAWSUIT SEEK

14:56:16 1 TO DO?

14:56:17 2 A TO UNDUE THE TRANSACTION THAT THEY HAVE DONE.

14:56:23 3 Q AND THOSE WERE THE TRANSACTIONS RELATED TO THE
14:56:29 4 NATIONAL TRUST SERVICES AND THE N.T.S. TRUST OF
14:56:31 5 DR. GOOTNICK?

14:56:33 6 A YES.

14:56:33 7 Q AND SO THIS LETTER WAS AFTER THAT?

14:56:35 8 A YES.

14:56:35 9 Q AND AT THE TIME THAT THE GOOTNICKS FILED THIS
14:56:42 10 LAWSUIT, WERE YOU ALSO CRIMINALLY CHARGED WITH
14:56:44 11 PREPARING FALSE AND FRAUDULENT TAX RETURNS?

14:56:46 12 A YES.

14:56:46 13 Q AND, NOW, WHEN YOU WERE CHARGED IN THAT FIRST
14:56:49 14 INDICTMENT, DO YOU REMEMBER WHEN THAT WAS?

14:56:51 15 A I'M NOT SURE OF THE EXACT MONTH, BUT IT WAS
14:57:03 16 2005.

14:57:03 17 Q WOULD SEEING THE INDICTMENT THAT CHARGED YOU
14:57:07 18 ORIGINALLY, WOULD THAT REFRESH YOUR RECOLLECTION?

14:57:09 19 A YES.

14:57:10 20 Q SHOWING WHAT HAS ALREADY BEEN SHOWN TO DEFENSE
14:57:18 21 COUNSEL THE ORIGINAL INDICTMENT IN CASE
14:57:24 22 CR-05-00215, UNITED STATES V. SAM FUNG.

14:57:30 23 NOW, LOOKING AT THE FIRST PAGE THERE,
14:57:34 24 MR. FUNG, DOES THAT REFRESH YOUR RECOLLECTION?

14:57:37 25 A YES.

14:57:37 1 Q WHEN WERE CRIMINAL CHARGES FILED AGAINST YOU?

14:57:45 2 A APRIL OF 2005.

14:57:46 3 Q AND THIS LETTER, THE 158 THAT WE WERE LOOKING
14:57:49 4 AT, THAT WAS IN AUGUST OF 2005?

14:57:51 5 A YES.

14:57:52 6 Q AND NOW, AFTER YOU -- AFTER CRIMINAL CHARGES
14:57:56 7 WERE FILED AGAINST YOU, DID YOU CONTINUE TO TALK TO
14:57:59 8 THE DEFENDANT?

14:57:59 9 A YES.

14:58:00 10 Q AND DID YOU TALK ABOUT THE CRIMINAL CHARGES
14:58:04 11 THAT HAD BEEN FILED AGAINST YOU?

14:58:06 12 A YES.

14:58:06 13 Q AND WHAT DID YOU DISCUSS WITH REGARDS TO THE
14:58:11 14 CRIMINAL CHARGES?

14:58:12 15 A THAT -- MANY THINGS, I THINK.

14:58:28 16 Q AND AT THAT TIME WERE YOU TALKING MORE TO THE
14:58:31 17 DEFENDANT OR MORE TO YOUR ATTORNEY -- YOUR DEFENSE
14:58:33 18 ATTORNEY ABOUT THE CASE, ABOUT YOUR CRIMINAL CASE?

14:58:36 19 A TO THE DEFENDANTS.

14:58:39 20 Q AND WHEN YOU SAY "THE DEFENDANTS," YOU MEAN
14:58:43 21 ERIC LIGHTER?

14:58:43 22 A YES.

14:58:44 23 Q AND WHY WERE YOU TALKING MORE TO THE DEFENDANT
14:58:46 24 THAN TO YOUR ATTORNEY?

14:58:47 25 A BECAUSE I THOUGHT THAT I HAD GIVEN THE

14:58:59 1 DEFENDANT MONEY EARLIER THAT I EXPECT HIM TO
14:59:02 2 CONTINUE HELPING ME.

14:59:03 3 Q AND HOW DID YOU FEEL ABOUT THE SERVICES THAT
14:59:06 4 YOUR ATTORNEY AT THAT TIME WAS PROVIDING TO YOU?

14:59:09 5 A I WAS NOT HAPPY ABOUT IT.

14:59:11 6 Q AND SO WHEN SOMETHING HAPPENED IN YOUR
14:59:13 7 CRIMINAL CASE, WHO WOULD YOU CONTACT AND TALK TO?

14:59:19 8 A THE DEFENDANT.

14:59:19 9 Q AND WHEN YOU CONTACTED THE DEFENDANT, WHAT
14:59:21 10 WOULD THE DEFENDANT DO?

14:59:22 11 A PREPARE A WHOLE BUNCH OF DOCUMENTS AND TOLD ME
14:59:27 12 TO FILE THOSE DOCUMENTS.

14:59:28 13 Q AND WHEN THE DEFENDANT WOULD TELL YOU OR WOULD
14:59:32 14 PREPARE THOSE DOCUMENTS AND TELL YOU TO FILE IT,
14:59:34 15 WHAT WOULD YOU DO?

14:59:34 16 A I FILED IT.

14:59:35 17 Q AND WHY WOULD YOU FILE THOSE DOCUMENTS?

14:59:37 18 A AT THE TIME I WAS, YOU KNOW, I UNDERSTAND THAT
14:59:47 19 THE DEFENDANTS WERE HELPING ME AND I TRUST THEM.

14:59:50 20 Q NOW, DURING THIS TIME WHEN YOU ARE FILING
14:59:57 21 DOCUMENTS IN YOUR CASE THAT THE DEFENDANT HAD
14:59:59 22 PREPARED. LET'S TALK JUST FOR A MOMENT ABOUT THE
15:00:02 23 CRIMINAL CHARGES.

15:00:02 24 WERE YOU CHARGED IN THAT ORIGINAL
15:00:05 25 INDICTMENT WITH PREPARING ANY FALSE OR FRAUDULENT

15:00:12 1 DOCUMENTS?

15:00:14 2 A NO.

15:00:14 3 Q WERE THE GOOTNICKS EVER MENTIONED IN THAT
15:00:16 4 INDICTMENT?

15:00:16 5 A NO.

15:00:16 6 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS
15:00:19 7 GOVERNMENT'S EXHIBIT 45 AND ALSO 47.

15:00:40 8 MR. FUNG, DO YOU RECOGNIZE GOVERNMENT'S
15:00:44 9 EXHIBIT 45?

15:00:44 10 A YES.

15:00:45 11 Q AND WHAT IS IT?

15:00:46 12 A IT'S A MOTION PREPARED BY THE DEFENDANT TO
15:00:59 13 FILE IT IN COURT.

15:00:59 14 Q AND WAS THIS ONE OF THE MOTIONS THAT YOU FILED
15:01:02 15 IN YOUR CRIMINAL CASE?

15:01:03 16 A YES.

15:01:04 17 Q AND SO IS IT A FAIR AND ACCURATE COPY OF THAT
15:01:07 18 MOTION?

15:01:07 19 A YES.

15:01:08 20 MS. WONG: AT THIS TIME THE GOVERNMENT
15:01:10 21 WOULD MOVE GOVERNMENT'S EXHIBIT 45 INTO EVIDENCE.

15:01:22 22 MR. FONG: NO OBJECTION, YOUR HONOR.

15:01:26 23 THE COURT: IT'S RECEIVED WITHOUT
15:01:28 24 OBJECTION.

15:01:28 25 (WHEREUPON, GOVERNMENT'S EXHIBIT NUMBER 45,

15:01:28 1 H A V I N G B E E N P R E V I O U S L Y M A R K E D F O R
15:01:28 2 I D E N T I F I C A T I O N , W A S A D M I T T E D I N T O
15:01:30 3 E V I D E N C E .)

15:01:30 4 B Y M S . W O N G :

15:01:30 5 Q N O W , M R . F U N G , W H E N Y O U F I L E D T H I S D O C U M E N T ,
15:01:32 6 D I D T H E D E F E N D A N T T E L L Y O U H O W I T W O U L D H E L P Y O U
15:01:42 7 A B O U T Y O U R N O W C R I M I N A L T A X P R O B L E M S ?

15:01:43 8 A I D O N ' T R E C A L L .

15:01:44 9 Q L E T ' S G O T O P A G E 2 O F T H I S E X H I B I T A N D F O C U S
15:01:51 10 O N T H E S E C O N D P A R A G R A P H A S W E L L A S T H E D A T E .
15:01:53 11 T H E R E .

15:01:58 12 A N D I T S A Y S H E R E , " F U N G H E R E B Y C O N F E S S E S
15:02:02 13 T O C O N S P I R A C Y N O W M A D E T O J O I N T H E G O O T N I C K S I N
15:02:05 14 T H E I R T A X F E L O N I E S . "

15:02:07 15 A Y E S .

15:02:07 16 Q N O W , W A S T H I S P A R T O F T H E D O C U M E N T T H A T T H E
15:02:10 17 D E F E N D A N T P R E P A R E D ?

15:02:11 18 A Y E S .

15:02:11 19 Q D I D Y O U I N T E N D , W H E N Y O U F I L E D T H I S D O C U M E N T ,
15:02:18 20 T O C O N F E S S T O C R I M I N A L O F F E N S E S O R F E L O N I E S ?

15:02:21 21 A N O .

15:02:21 22 Q A N D A T T H I S T I M E T H E G O O T N I C K S W E R E N O T P A R T
15:02:24 23 O F T H I S C A S E T H A T Y O U F I L E D T H E D O C U M E N T I N , W E R E
15:02:28 24 T H E Y ?

15:02:28 25 A N O .

15:02:28 1 Q LET'S GO AND TAKE A LOOK AT GOVERNMENT'S
15:02:32 2 EXHIBIT 47, MR. FUNG, THAT'S IN FRONT OF YOU.

15:02:35 3 DO YOU RECOGNIZE THAT DOCUMENT?

15:02:38 4 A YES.

15:02:39 5 Q AND WHAT IS IT?

15:02:41 6 A IT'S ANOTHER MOTION THAT THE DEFENDANT
15:02:44 7 PREPARED AND TOLD ME TO FILE.

15:02:45 8 Q AND DID YOU, IN FACT, FILE IT?

15:02:47 9 A YES.

15:02:47 10 Q AND THAT WAS IN YOUR CRIMINAL CASE?

15:02:49 11 A YES.

15:02:49 12 Q AND IS IT A FAIR AND ACCURATE COPY OF THAT
15:02:53 13 MOTION?

15:02:54 14 A YES.

15:02:55 15 MS. WONG: AT THIS TIME THE GOVERNMENT
15:02:56 16 WOULD OFFER GOVERNMENT'S EXHIBIT 47 INTO EVIDENCE.

15:03:05 17 MR. FONG: NO OBJECTION, YOUR HONOR.

15:03:06 18 THE COURT: IT'S RECEIVED WITHOUT
15:03:08 19 OBJECTION.

15:03:08 20 (WHEREUPON, GOVERNMENT'S EXHIBIT NUMBER 47,
15:03:08 21 HAVING BEEN PREVIOUSLY MARKED FOR
15:03:08 22 IDENTIFICATION, WAS ADMITTED INTO
15:03:20 23 EVIDENCE.)

15:03:20 24 BY MS. WONG:

15:03:21 25 Q NOW, MR. FUNG, WHAT, IF ANYTHING, DID THE

15:03:25 1 DEFENDANT TELL YOU ABOUT WHY IT WOULD HELP YOU TO
15:03:27 2 FILE THIS MOTION?

15:03:27 3 A THAT IF THE GOOTNICKS ARE NOT GOING TO BE
15:03:42 4 PUNISHED, I SHOULDN'T GET PUNISHED, OR SOMETHING
15:03:45 5 LIKE THAT.

15:03:46 6 Q AND -- BUT, ONCE AGAIN, IN THIS CASE THAT YOU
15:03:49 7 FILED THIS DOCUMENT, THE GOOTNICKS WERE NOT ONE OF
15:03:52 8 THE CLIENTS THAT YOU WERE CHARGED WITH PREPARING
15:04:00 9 FALSE AND FRAUDULENT TAX RETURNS FOR?

15:04:04 10 A NO.

15:04:05 11 MS. WONG: YOUR HONOR, THIS IS A GOOD
15:04:06 12 TIME FOR THE GOVERNMENT TO BREAK.

15:04:06 13 THE COURT: ALL RIGHT. WE'LL TAKE OUR
15:04:09 14 AFTERNOON RECESS AT THIS POINT. WE'LL BE IN RECESS
15:04:12 15 FOR 15 MINUTES. YOU CAN STEP DOWN, SIR.

15:04:18 16 REMEMBER MY ADMONITIONS.

15:21:38 17 (WHEREUPON, A RECESS WAS TAKEN.)

15:22:18 18 THE COURT: ALL RIGHT. THANK YOU. WE'RE
15:22:20 19 BACK IN SESSION. OUR JURORS ARE HERE AND THE
15:22:22 20 DEFENDANT IS PRESENT AND OUR ALTERNATES ARE HERE
15:22:25 21 AND MR. FUNG IS BACK ON THE STAND.

15:22:26 22 AND, MS. WONG, DID YOU WISH TO CONTINUE?

15:22:30 23 MS. WONG: YES. THANK YOU, YOUR HONOR.

15:22:31 24 Q NOW, MR. FUNG, YOU SAID THAT YOU HAD BECOME
15:22:34 25 AWARE THAT THE GOOTNICKS HAD FILED A CIVIL LAWSUIT

15:22:38 1 AGAINST THE DEFENDANT BEFORE WE BROKE, RIGHT?

15:22:42 2 A YES.

15:22:42 3 Q AND DID YOU -- AFTER YOU LEARNED ABOUT THAT
15:22:48 4 CIVIL LAWSUIT, DID YOU CONTINUE TO TALK TO THE
15:22:50 5 DEFENDANT ABOUT THAT LAWSUIT?

15:22:51 6 A YES.

15:22:53 7 Q AND WHAT WOULD THE DEFENDANT TELL YOU ABOUT
15:22:55 8 THAT LAWSUIT?

15:22:56 9 A THAT THE DEFENDANT SAID SOME SORT OF
15:23:12 10 BANKRUPTCY.

15:23:12 11 Q SOME SORT OF BANKRUPTCY?

15:23:13 12 A THAT -- I DON'T EXACTLY RECALL, BUT IT WAS --

15:23:21 13 Q DID THE DEFENDANT SAY WHO OR WHAT HAD FILED
15:23:23 14 FOR BANKRUPTCY?

15:23:24 15 A THE CORPORATION.

15:23:28 16 Q AND WHAT CORPORATION WAS THE DEFENDANT
15:23:31 17 REFERRING TO?

15:23:31 18 A HCHC.

15:23:36 19 Q AND SO ONE OF THE CORPORATIONS THAT THE
15:23:38 20 DEFENDANT CONTROLLED?

15:23:39 21 A YES.

15:23:40 22 Q NOW, DID THERE COME A TIME WHEN THE
15:23:46 23 DEFENDANT -- WHEN YOU WERE DEPOSED IN THE LAWSUIT
15:23:48 24 AGAINST GOOTNICKS?

15:23:50 25 A YES.

15:23:51 1 Q AND SO YOU WERE ASKED TO GIVE TESTIMONY UNDER
15:23:53 2 OATH IN THAT CIVIL LAWSUIT?

15:23:54 3 A YES.

15:23:54 4 Q AND BEFORE YOU GAVE TESTIMONY IN THAT LAWSUIT,
15:24:01 5 DID YOU SPEAK WITH THE DEFENDANT?

15:24:02 6 A YES.

15:24:02 7 Q AND WHAT DID THE DEFENDANT TELL YOU?

15:24:04 8 A HE ADVISED ME WHAT TO SAY, SOME OF THE THINGS.

15:24:10 9 Q AND DID THE DEFENDANT ALSO ADVISE YOU WHAT NOT
15:24:12 10 TO SAY?

15:24:12 11 A I DON'T RECALL.

15:24:18 12 Q NOW, IN ADDITION TO BEING IN THAT DEPOSITION,
15:24:22 13 DO YOU RECALL IF YOU FILED ANY DOCUMENTS IN THAT
15:24:25 14 LAWSUIT -- IN THE GOOTNICK CIVIL LAWSUIT?

15:24:27 15 A I DON'T RECALL.

15:24:32 16 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS
15:24:35 17 GOVERNMENT'S EXHIBIT 46 FOR IDENTIFICATION
15:24:37 18 PURPOSES.

15:24:49 19 DO YOU RECOGNIZE THAT DOCUMENT, MR. FUNG?

15:24:51 20 A YES.

15:24:51 21 Q AND WHAT IS IT?

15:24:52 22 A IT'S AN AFFIDAVIT OF MYSELF IN THE LAWSUIT
15:25:04 23 BETWEEN THE DEFENDANT AND GOOTNICK.

15:25:05 24 Q AND THAT AFFIDAVIT, WHO ACTUALLY PREPARED THAT
15:25:08 25 AFFIDAVIT?

15:25:09 1 A THE DEFENDANT HELPED TO PREPARE THAT.

15:25:18 2 Q AND THEN AFTER HE PREPARED IT, DID YOU SOMEHOW
15:25:22 3 OBTAIN A COPY?

15:25:27 4 MR. FONG: OBJECTION, MISSTATES
15:25:30 5 MR. FUNG'S EARLIER TESTIMONY.

15:25:31 6 THE COURT: SUSTAINED.
15:25:32 7 BY MS. WONG:

15:25:32 8 Q AFTER THE DEFENDANT -- WHAT DO YOU MEAN THE
15:25:35 9 DEFENDANT HELPED PREPARE IT?

15:25:36 10 A THAT HIS ORIGINAL DRAFT WAS E-MAILED TO ME AND
15:25:51 11 I LOOKED AT IT AND TO MAKE SURE THAT IS CORRECT.

15:26:00 12 Q AND WHO WAS THE PERSON WHO E-MAILED YOU THE
15:26:02 13 DRAFT OF THE DOCUMENT?

15:26:03 14 A THE DEFENDANT.

15:26:03 15 Q AND BEFORE HE E-MAILED YOU THAT DRAFT, HAD YOU
15:26:06 16 WORKED AT ALL ON THAT DOCUMENT THAT WAS FILED?

15:26:08 17 A I'M SORRY?

15:26:14 18 Q HAD YOU DONE ANY DRAFT YOURSELF OF THAT
15:26:16 19 DOCUMENT OR WAS THE FIRST COPY YOU SAW FROM THE
15:26:19 20 DEFENDANT?

15:26:19 21 A CAN YOU REPEAT THE QUESTION? I WAS TRYING TO
15:26:32 22 THINK.

15:26:33 23 Q WAS THE FIRST COPY OF THAT DOCUMENT, WAS IT
15:26:35 24 FROM THE DEFENDANT OR DID YOU PREPARE YOUR OWN
15:26:37 25 DRAFT OF THE DOCUMENT?

15:26:38 1 A LET ME TAKE A LOOK. I REVIEWED THE LANGUAGE
15:27:20 2 AND WHETHER IT'S MY LANGUAGE OR NOT. AND A LOT OF
15:27:25 3 THE LANGUAGE IS NOT MY LANGUAGE.

15:27:25 4 Q AND WHOSE LANGUAGE IS IT?

15:27:27 5 A THE DEFENDANTS.

15:27:28 6 Q IS THAT A FAIR AND ACCURATE COPY OF WHAT YOU
15:27:30 7 SIGNED AND THAT THE DEFENDANT HELP PREPARE?

15:27:32 8 A YES.

15:27:33 9 MS. WONG: AT THIS TIME THE GOVERNMENT
15:27:34 10 OFFERS GOVERNMENT'S EXHIBIT 47 INTO EVIDENCE. --
15:27:43 11 SORRY, 46.

15:27:45 12 MR. FONG: NO OBJECTION TO EXHIBIT 46,
15:27:47 13 YOUR HONOR.

15:27:47 14 THE COURT: IT'S RECEIVED WITHOUT
15:27:48 15 OBJECTION.

15:27:49 16 (WHEREUPON, GOVERNMENT'S EXHIBIT NUMBER 46,
15:27:49 17 HAVING BEEN PREVIOUSLY MARKED FOR
15:27:49 18 IDENTIFICATION, WAS ADMITTED INTO
15:28:06 19 EVIDENCE.)

15:28:06 20 BY MS. WONG:

15:28:06 21 Q NOW, MR. FUNG, LET'S GO TO JUST THE LAST PAGE
15:28:09 22 OF THIS DOCUMENT.

15:28:10 23 AND THIS SHOWS WHAT IS THE DATE AROUND OR
15:28:15 24 ABOUT WHEN THIS DOCUMENT WAS PREPARED?

15:28:16 25 A NOVEMBER 17TH, 2005. YEAH.

15:28:24 1 Q NOW, IN ADDITION TO THAT DOCUMENT, I'M GOING
15:28:28 2 TO SHOW YOU WHAT IS NOW BEEN MARKED AS GOVERNMENT'S
15:28:31 3 EXHIBIT 16 FOR IDENTIFICATION PURPOSES.

15:28:37 4 THE COURT: WHAT NUMBER?

15:28:39 5 MS. WONG: 16, 1-6.

15:28:42 6 THE COURT: 16. THANK YOU.

15:28:46 7 BY MS. WONG:

15:28:47 8 Q LET'S START WITH THE FIRST PAGE OF THAT
15:28:48 9 DOCUMENT. MR. FUNG, DO YOU RECOGNIZE THE FIRST
15:28:52 10 PAGE OF EXHIBIT 16?

15:28:53 11 A YES.

15:28:53 12 Q AND IS THAT YOUR SIGNATURE ON THAT PAGE?

15:28:55 13 A YES.

15:28:55 14 Q AND IS THAT A FAIR AND ACCURATE COPY OF THE
15:28:57 15 DOCUMENT THAT YOU SIGNED?

15:28:58 16 A YES.

15:28:58 17 Q AND WHAT IS IT?

15:28:59 18 A THIS IS A LETTER FROM THE GOOTNICK FAMILY
15:29:05 19 TRUST APPOINTING TO HIS WIFE SUSAN GOOTNICK TO
15:29:31 20 HAVING HIS WIFE BACK AS THE SUCCESSOR TRUSTEE
15:29:38 21 EITHER MYSELF OR DR. GOOTNICK OR IRWIN GOOTNICK
15:29:45 22 THAT THEY WILL BE ON BOARD AS THE TRUSTEE.

15:29:48 23 Q AND, NOW, LET'S GO TO THE NEXT FEW PAGES OF
15:29:54 24 EXHIBIT 16. DO YOU RECOGNIZE THE FAX NUMBER THAT
15:29:57 25 APPEARS IN THE TOP PART OF THOSE PAGES?

15:29:59 1 A YES.

15:29:59 2 Q AND WHOSE NUMBER? TO WHOM DOES THAT NUMBER
15:30:03 3 BELONG?

15:30:03 4 A THE DEFENDANT.

15:30:04 5 Q HAVE YOU RECEIVED FAXES FROM THAT NUMBER?

15:30:07 6 A YES.

15:30:10 7 MS. WONG: AT THIS TIME THE GOVERNMENT
15:30:12 8 WOULD OFFER GOVERNMENT'S EXHIBIT 16 INTO EVIDENCE/

15:30:19 9 MR. FONG: NO OBJECTION, YOUR HONOR.

15:30:20 10 THE COURT: IT'S RECEIVED WITHOUT
15:30:21 11 OBJECTION.

15:30:21 12 (WHEREUPON, GOVERNMENT'S EXHIBIT NUMBER 16,
15:30:21 13 HAVING BEEN PREVIOUSLY MARKED FOR
15:30:21 14 IDENTIFICATION, WAS ADMITTED INTO
15:30:34 15 EVIDENCE.)

15:30:34 16 BY MS. WONG:

15:30:35 17 Q NOW, MR. FUNG, I'D LIKE YOU TO LOOK AT THE
15:30:37 18 DATE THAT IS LISTED ON THIS DOCUMENT, AUGUST 2ND OF
15:30:43 19 1997. IS THAT FALSE? WAS THIS DOCUMENT ACTUALLY
15:30:46 20 PREPARED ON AUGUST 2ND OF 1997?

15:30:48 21 A NO.

15:30:48 22 Q WAS IT PREPARED BEFORE OR AFTER THAT DATE?

15:30:50 23 A AFTER.

15:30:51 24 Q AND DO YOU KNOW WHY THIS DOCUMENT WAS
15:30:55 25 PREPARED? WHAT'S THE PURPOSE OF THIS DOCUMENT?

15:30:57 1 A THE PURPOSE OF THE DOCUMENT IS AFTER IRWIN
15:31:07 2 GOOTNICK CONSULTED AN ATTORNEY, THE THEN ATTORNEY
15:31:14 3 REVIEWED THE GOOTNICK'S TRUST AND THE ATTORNEY TOLD
15:31:22 4 GOOTNICK THAT HIS WIFE CANNOT BE THE TRUSTEE, THAT
15:31:24 5 I SHOULD BE THE TRUSTEE ALONG WITH DR. GOOTNICK.

15:31:26 6 Q AND IN CHANGING THE TRUSTEE, DO YOU KNOW WHAT
15:31:34 7 THE PURPOSE OF CHANGING THE TRUSTEE AS FAR AS THE
15:31:37 8 GOOTNICK'S TAX ISSUES AND THEIR TRUST?

15:31:39 9 A THE SAME.

15:31:48 10 Q WHEN THE GOOTNICKS WERE CONSULTING WITH AN
15:31:51 11 ATTORNEY AND THIS DOCUMENT RESULTED, WHAT WAS IT
15:31:54 12 SUPPOSED TO DO FOR THE GOOTNICK'S TAX PROBLEMS?

15:31:56 13 A NOTHING.

15:31:57 14 Q BUT YOU -- AND YOU SIGNED THIS DOCUMENT?

15:31:59 15 A YES.

15:31:59 16 Q NOW, THE NEXT FEW -- LET'S GO TO PAGE 2 OF
15:32:07 17 THIS PARTICULAR DOCUMENT.

15:32:13 18 WERE YOU INVOLVED IN PREPARING PAGE 2 AND
15:32:16 19 3 OF GOVERNMENT'S EXHIBIT 16?

15:32:18 20 A NO.

15:32:19 21 Q NOW, THE DATE THAT IS SHOWN IN THE UPPER
15:32:26 22 LEFT-HAND CORNER, WHAT IS THE DATE ON THIS
15:32:30 23 DOCUMENT?

15:32:30 24 A MARCH 22ND, 2006.

15:32:32 25 Q AND IS THAT AFTER THE GOOTNICKS HAD FILED

15:32:35 1 THEIR CIVIL LAWSUIT AGAINST THE DEFENDANT?

15:32:37 2 A YES.

15:32:40 3 Q NOW, MR. FUNG, I WANT TO TALK A LITTLE BIT
15:32:44 4 ABOUT WHAT HAPPENED IN MARCH OF 2006.

15:32:48 5 COULD YOU JUST TELL THE JURY IF DURING
15:32:53 6 THE TIME BETWEEN WHEN THE CIVIL LAWSUIT WAS FILED
15:32:55 7 IN MARCH OF 2006, IF YOU WERE TALKING TO THE
15:32:58 8 DEFENDANT OVER THE PHONE DURING THAT TIME?

15:33:01 9 A YES.

15:33:01 10 Q AND HOW OFTEN WOULD YOU SAY YOU WERE TALKING
15:33:07 11 TO THE DEFENDANT DURING THAT TIME?

15:33:08 12 A QUITE OFTEN.

15:33:09 13 Q AND DURING THOSE CONVERSATIONS, TO THE EXTENT
15:33:13 14 THAT YOU CAN, WHO WOULD YOU SAY TALKED MORE, YOU OR
15:33:18 15 THE DEFENDANT?

15:33:18 16 A THE DEFENDANT.

15:33:19 17 Q AND IF YOU HAD TO BREAK IT DOWN AND GIVE A
15:33:23 18 PERCENTAGE ON AVERAGE, HOW MUCH WOULD THE DEFENDANT
15:33:24 19 TALK COMPARED TO YOU IN A TYPICAL CONVERSATION?

15:33:27 20 A THE DEFENDANT PROBABLY TALK 75 PERCENT, AND I
15:33:32 21 TALK 25 PERCENT.

15:33:33 22 Q AND IN MARCH OF 2006, DID YOU RECEIVE A PHONE
15:33:39 23 CALL FROM THE DEFENDANT AROUND MARCH 2ND?

15:33:44 24 A YES.

15:33:45 25 Q AND WHAT -- WHAT DID THAT PHONE CALL -- WHAT

15:33:49 1 DID THE DEFENDANT SAY TO YOU IN THAT PHONE CALL?

15:33:51 2 A THAT I MUST CALL IRWIN GOOTNICK.

15:34:01 3 Q AND DID THE DEFENDANT TELL YOU WHY YOU NEEDED
15:34:03 4 TO CALL DR. GOOTNICK?

15:34:05 5 A YES.

15:34:05 6 Q AND WHAT DID HE SAY?

15:34:06 7 A HE SAID THAT I NEED TO -- HE CANNOT CALL
15:34:14 8 DR. GOOTNICK BECAUSE OF THE LAWSUIT, THAT I NEED TO
15:34:15 9 CALL FOR HIM TO CONVINCE DR. GOOTNICK TO DROP HIS
15:34:20 10 CIVIL LAWSUITS.

15:34:21 11 Q AND, MR. FUNG, WHY WERE YOU SUPPOSED TO BE THE
15:34:26 12 ONE CONVINCING DR. GOOTNICK? DID THE DEFENDANT
15:34:33 13 SAY?

15:34:34 14 A HE DIDN'T SAY BUT HE PROBABLY KNOW THAT I
15:34:39 15 PROBABLY KNEW HIM FOR A LONG TIME.

15:34:40 16 Q AND WHAT DID THE DEFENDANT, IF ANYTHING, SAY
15:34:46 17 WOULD BE THE ADVANTAGE TO YOU OF CALLING
15:34:49 18 DR. GOOTNICK?

15:34:49 19 A THAT --

15:34:51 20 MR. FONG: OBJECTION, LEADING.

15:34:52 21 THE COURT: SUSTAINED.

15:34:53 22 BY MS. WONG:

15:34:54 23 Q DID -- DID THE DEFENDANT TALK ABOUT ANYTHING
15:34:59 24 THAT MIGHT, THAT MIGHT AFFECT YOU OR AS A RESULT OF
15:35:04 25 CALLING DR. GOOTNICK?

15:35:05 1
15:35:06 2
15:35:07 3
15:35:11 4
15:35:11 5
15:35:13 6
15:35:15 7
15:35:25 8
15:35:27 9
15:35:31 10
15:35:34 11
15:35:35 12
15:35:36 13
15:35:38 14
15:35:40 15
15:35:40 16
15:35:46 17
15:35:46 18
15:35:46 19
15:35:50 20
15:35:51 21
15:35:51 22
15:35:55 23
15:35:55 24
15:36:00 25

A YES.

Q AND WHAT WAS THAT?

A THAT THAT DEFINITELY WOULD HELP MY CRIMINAL CASE.

Q AND HOW DID THE DEFENDANT SAY THAT CALLING DR. GOOTNICK WOULD HELP YOUR CRIMINAL CASE?

A HE EXPLAINED IT VERY CONVINCING AND I DON'T RECALL THE DETAILS, HOW TO REPEAT IT TO YOU.

Q NOW, THIS IS THE SAME CRIMINAL CASE WHERE YOU WERE CHARGED WITH PREPARED FALSE AND FRAUDULENT TAX RETURNS, RIGHT?

A THAT'S CORRECT.

Q BUT DR. GOOTNICK'S RETURNS WERE NOT SOME OF THOSE RETURNS THAT WERE CHARGED IN THE INDICTMENT?

A NO.

Q AND, NOW, DID YOU EVENTUALLY AGREE TO CALL DR. GOOTNICK?

A YES.

Q AND DID YOU MAKE THAT PHONE CALL ON MARCH 2ND OF 2006?

A YES.

Q AND WHAT DID YOU SAY TO DR. GOOTNICK WHEN YOU CALLED HIM?

A TRYING TO CONVINCE HIM BASED ON WHAT THE DEFENDANT TOLD ME AND EXPLAIN TO ME TO SAY.

15:36:05 1 Q SO WHAT DID THE DEFENDANT TELL YOU TO SAY TO
15:36:08 2 DR. GOOTNICK DURING THAT PHONE CALL?

15:36:10 3 A TO TELL DR. GOOTNICK TO DROP THE CIVIL
15:36:18 4 LAWSUITS AND SOME COOPERATION THAT WILL HELP HIM
15:36:23 5 AND HELP MYSELF.

15:36:24 6 Q AND NOW, WHAT, IF ANYTHING, DID DR. GOOTNICK
15:36:29 7 AGREE DURING THAT MARCH 2ND, 2000 PHONE
15:36:32 8 CONVERSATION TO DROP THE CIVIL LAWSUIT?

15:36:33 9 A NO.

15:36:34 10 Q WHAT DID DR. GOOTNICK SAY INSTEAD?

15:36:38 11 A HE KEEP ASKING QUESTIONS.

15:36:43 12 Q WHAT SORT OF QUESTIONS?

15:36:45 13 A I CANNOT RECALL.

15:36:50 14 Q NOW, WHEN DR. GOOTNICK WAS REFUSING IN THIS
15:36:54 15 PHONE CALL TO DROP THE LAWSUIT, DID YOU SAY
15:36:57 16 ANYTHING ELSE TO HIM TO TRY TO CONVINCE HIM TO DROP
15:37:00 17 THE LAWSUIT?

15:37:00 18 A YES.

15:37:01 19 Q AND WHAT DID YOU TELL HIM?

15:37:02 20 A I WAS TOLD BY THE DEFENDANT THAT THE GOOTNICKS
15:37:11 21 HAVE A LOT OF REPORTED INCOME. I THOUGHT I
15:37:14 22 BELIEVED HIM AND I THOUGHT THAT HE WILL BENEFIT BY
15:37:19 23 HAVING THE DEFENDANT NOT TESTIFY AGAINST HIM ON HIS
15:37:25 24 REPORTED TAX.

15:37:27 25 Q AND SO IS IT FAIR TO SAY THAT YOU MENTIONED

15:37:32 1 THE UNREPORTED INCOME THAT DR. GOOTNICK WAS
15:37:35 2 SUPPOSED TO HAVE TO TRY TO CONVINCE HIM TO DROP THE
15:37:38 3 LAWSUIT?

15:37:38 4 A I WAS TOLD BY THE DEFENDANT THAT'S A LOT OF
15:37:45 5 UNREPORTED INCOME IN THE PAPERS.

15:37:48 6 Q AND WHAT WAS YOUR PURPOSE IN TELLING THAT TO
15:37:50 7 DR. GOOTNICK, WHAT WERE YOU TRYING TO GET HIM TO
15:37:52 8 DO?

15:37:52 9 A TO DROP THE LAWSUIT BETWEEN HIM AND THE
15:38:01 10 DEFENDANT.

15:38:04 11 Q AND HOW DID YOU INTEND DR. GOOTNICK -- AND HOW
15:38:11 12 DID YOU INTEND THE DISCUSSION OF DR. GOOTNICK'S
15:38:14 13 UNREPORTED INCOME TO COME ACROSS? WAS IT MEANT TO
15:38:17 14 MAKE HIM FEEL HAPPY?

15:38:18 15 A NO, UPSET.

15:38:21 16 Q AND, NOW, WHAT WAS THE PLAN -- DID YOU AND THE
15:38:24 17 DEFENDANT DISCUSS WHAT TO DO IF DR. GOOTNICK DIDN'T
15:38:27 18 AGREE TO GO AND DROP HIS LAWSUIT?

15:38:34 19 A SOME TYPE OF ACTION. I DON'T RECALL.

15:38:36 20 Q NOW, AFTER YOU HAD THAT MARCH 2ND
15:38:41 21 CONVERSATION, DID YOU GET IN CONTACT WITH THE
15:38:43 22 DEFENDANT?

15:38:44 23 A YES.

15:38:46 24 Q AND WHAT DID YOU SAY DURING THAT CONVERSATION?

15:38:50 25 A THAT I MAKE THE PHONE CALL THAT HE WANTED ME

15:39:02 1

TO MAKE.

15:39:02 2

Q AND DID YOU TELL THE DEFENDANT WHAT HAPPENED

15:39:04 3

DURING THE PHONE CALL?

15:39:05 4

A YES.

15:39:07 5

Q AND WHAT DID THE DEFENDANT SAY WHEN YOU TOLD

15:39:09 6

HIM WHAT HAPPENED DURING THAT PHONE CALL?

15:39:11 7

A THAT DR. GOOTNICK WOULDN'T BE DROPPING THE

15:39:23 8

LAWSUIT.

15:39:23 9

Q AND HOW DID THE DEFENDANT RESPOND WHEN YOU

15:39:24 10

TOLD HIM DR. GOOTNICK WOULDN'T BE DROPPING THE

15:39:26 11

LAWSUIT?

15:39:27 12

A I DON'T RECALL.

15:39:27 13

Q MR. FUNG, NOW I'D LIKE TO TALK A LITTLE BIT

15:39:29 14

ABOUT SOME OF THE DIFFERENT PHONE NUMBERS AND ASK

15:39:32 15

IF YOU RECOGNIZE THEM AND THEN WE'RE GOING TO GO TO

15:39:36 16

GOVERNMENT'S EXHIBIT 22.

15:39:38 17

AND WE NEED TO GO TO PAGE 45 IN

15:39:43 18

GOVERNMENT'S EXHIBIT 22.

15:39:44 19

MR. FUNG, I'M GOING TO ASK YOU IF YOU

15:39:47 20

RECOGNIZE THIS NUMBER: AREA CODE 541-479-9881.

15:40:01 21

IT'S NOT ON THE SCREEN, MR. FUNG.

15:40:04 22

A YES.

15:40:04 23

Q WHO DOES THAT NUMBER BELONG TO?

15:40:08 24

A ME.

15:40:15 25

Q AND HERE'S ANOTHER NUMBER AND IT'S ALSO AGAIN

15:40:18 1 NOT ON THIS. IT MAY BE ON THE SCREEN BUT IT'S
15:40:23 2 541-301-8028.
15:40:27 3 A MY CELL PHONE.
15:40:28 4 Q AND THIS NUMBER: 541-301-8640?
15:40:34 5 A MY WIFE'S CELL PHONE.
15:40:36 6 Q AND 541-941-4158?
15:40:43 7 A MY OLD CELL PHONE.
15:40:45 8 Q AREA CODE 541-772-4735?
15:40:53 9 A MY HOME PHONE.
15:40:54 10 Q ALSO, DO YOU RECOGNIZE THIS NUMBER:
15:41:00 11 888-858-2162?
15:41:01 12 A MY FAX NUMBER.
15:41:05 13 Q 541-772-4788?
15:41:10 14 A MY HOME FAX LINE.
15:41:13 15 Q NOW, DO YOU RECOGNIZE THIS NUMBER,
15:41:23 16 808-382-1894?
15:41:23 17 A THE DEFENDANT'S PHONE NUMBER.
15:41:27 18 Q HOW ABOUT 808-533-8801?
15:41:32 19 A ONE OF THE DEFENDANT'S PHONE NUMBER.
15:41:36 20 Q AND 808-985-7349?
15:41:40 21 A ONE MUCH THE DEFENDANT'S PHONE NUMBER.
15:41:43 22 Q NOW, TURNING YOUR ATTENTION TO WHAT IS ON THE
15:41:47 23 SCREEN IN FRONT OF YOU.
15:41:48 24 IF WE CAN BLOW UP THE TOP PART THAT SHOWS
15:41:55 25 BEFORE THE DETAILS AND THEN WE'LL LOOK AT THE CALLS

15:41:58 1 SPECIFICALLY.

15:41:59 2 IS THIS YOUR TELEPHONE BILL FOR THE
15:42:05 3 PERIOD THAT INCLUDES -- THAT WAS -- THE BILL DATE
15:42:09 4 IS MARCH 8TH OF 2006?

15:42:11 5 A YES.

15:42:11 6 Q AND NOW, FOCUSSED ON THE ACTUAL CALL DETAILS.
15:42:17 7 IF WE CAN INCLUDE, IF WE CAN INCLUDE FROM CALL 218
15:42:26 8 DOWN TO 230.

15:42:36 9 NOW, IF YOU LOOK AT THE TOP THERE,
15:42:39 10 MR. FUNG, THE CALL 225. DO YOU SEE THAT CALL ON
15:42:48 11 3 -- ON MARCH 2ND?

15:42:50 12 A YES.

15:43:01 13 Q AND BETWEEN WHOM WAS THAT CALL ON MARCH 2ND?

15:43:05 14 A MYSELF AND THE DEFENDANT.

15:43:07 15 Q AND WAS THAT A CALL DISCUSSING YOUR CALL TO
15:43:25 16 DR. GOOTNICK?

15:43:25 17 A I DON'T RECALL.

15:43:26 18 Q NOW, THERE'S ALSO, IF WE GO DOWN TO THE
15:43:29 19 NUMBERED, BUT THIS IS ON MARCH 2ND, AND THAT'S THE
15:43:32 20 DAY THAT YOU CALLED DR. GOOTNICK, RIGHT?

15:43:34 21 A THAT'S CORRECT.

15:43:34 22 Q AND, IN FACT, THERE'S ANOTHER CALL. DO YOU
15:43:40 23 SEE THE CALL 229 ON MARCH 2ND, TO HONOLULU AT 2:02
15:43:45 24 P.M.

15:43:46 25 A YES.

15:43:46 1 Q AND WAS THAT ALSO A CALL BETWEEN YOU AND THE
15:43:48 2 DEFENDANT?

15:43:48 3 A YES.

15:43:49 4 Q AND IN BETWEEN THOSE TWO CALLS, THERE'S A CALL
15:44:01 5 TO SAN RAFAEL, CALIFORNIA, RIGHT?

15:44:03 6 A YES. YES.

15:44:05 7 Q NOW, DURING THOSE CALLS ON MARCH 2ND, WITH THE
15:44:07 8 DEFENDANT, THOSE TWO PHONE CALLS, WHAT DID YOU
15:44:10 9 DISCUSS WITH THE DEFENDANT?

15:44:18 10 A WHICH PHONE CALL?

15:44:19 11 Q BOTH THE CALL AT 1:43 P.M. AND THE CALL AT
15:44:32 12 2:02 P.M.

15:44:51 13 A THE FIRST ONE I REMEMBER THE DEFENDANT CALLED
15:44:53 14 ME AND I WAS IN THE MIDDLE OF SOMEWHERE AND I ASKED
15:44:55 15 HIM TO CALL ME BACK.

15:44:56 16 SO 225 MAY BE THE CALL WHEN I CALLED HIM
15:45:00 17 BACK.

15:45:00 18 Q AND WHAT DID YOU DISCUSS WHEN YOU CALLED HIM
15:45:02 19 BACK?

15:45:03 20 A THAT THE DEFENDANT ASKED ME IF I CALLED
15:45:05 21 DR. GOOTNICK.

15:45:06 22 Q AND AFTER THAT YOU DID CALL DR. -- DID YOU
15:45:09 23 CALL DR. GOOTNICK?

15:45:10 24 A YES.

15:45:10 25 Q NOW, IN ADDITION TO YOUR PHONE CALL ON MARCH

15:45:13 1 2ND OF 2006, DID YOU TALK TO DR. GOOTNICK AGAIN?

15:45:16 2 A YES.

15:45:17 3 Q AND DID YOU TALK TO HIM ON MARCH 3RD OF 2006?

15:45:21 4 A I BELIEVE SO.

15:45:23 5 Q NOW, AT THE TIME THAT YOU HAD THOSE

15:45:26 6 CONVERSATIONS WITH DR. GOOTNICK, DID YOU KNOW THAT

15:45:29 7 THOSE CONVERSATIONS WERE BEING REPORTED?

15:45:32 8 A NO.

15:45:32 9 Q AND WHAT WERE YOU TRYING TO DO DURING THESE

15:45:34 10 CONVERSATIONS WITH DR. GOOTNICK ON MARCH 3RD OF

15:45:37 11 2006?

15:45:37 12 A SIMILAR TO WHAT THE DEFENDANT ASKED ME TO DO

15:45:52 13 TO CONVINCE HIM TO DROP THE LAWSUIT THAT I

15:45:56 14 REMEMBER.

15:45:57 15 Q AND DID YOU WANT THE DEFENDANT OR DID YOU

15:46:00 16 WANT -- DID THE DEFENDANT AND YOU DISCUSS

15:46:04 17 SOMETHING -- WHAT, IF ANYTHING, DR. GOOTNICK COULD

15:46:06 18 DO FOR YOU?

15:46:15 19 A I DON'T RECALL.

15:46:15 20 Q DURING THOSE CONVERSATIONS WITH DR. GOOTNICK,

15:46:18 21 DID YOU TRY TO CONVINCE DR. GOOTNICK TO DO ANYTHING

15:46:20 22 WITH REGARDS TO YOUR CRIMINAL CASE?

15:46:30 23 A I DON'T RECALL. I DON'T REMEMBER.

15:46:32 24 Q NOW, IF WE GO -- WE'RE STILL ON THAT SAME PAGE

15:46:34 25 OF THE GOVERNMENT'S EXHIBIT 22. IF WE CAN GO DOWN

15:46:43 1 TO THE BOTTOM THERE FOR CALLS 250 THROUGH 255.

15:46:54 2 NOW, CALL 250, MR. FUNG, WAS THAT ANOTHER
15:47:00 3 PHONE CALL BETWEEN YOU AND THE DEFENDANT?

15:47:01 4 A YES.

15:47:08 5 Q AND HOW ABOUT THE CALL 254 ON MARCH 3RD AT
15:47:16 6 5:33 P.M.? WAS THAT ANOTHER CALL BETWEEN YOU AND
15:47:18 7 THE DEFENDANT?

15:47:19 8 A YES.

15:47:20 9 Q AND WHAT DID YOU TALK WITH THE DEFENDANT ABOUT
15:47:23 10 DURING THOSE TWO PHONE CONVERSATIONS ON MARCH 3RD?

15:47:29 11 A I REPORTED TO THE DEFENDANT WHAT THE
15:47:31 12 CONVERSATION WAS ALL ABOUT AND WHEN I CALLED
15:47:34 13 DR. GOOTNICK.

15:47:34 14 Q AND WHEN YOU SAY WHEN YOU CALLED DR. GOOTNICK,
15:47:38 15 WHEN YOU HAD TALKED TO HIM ON MARCH 2ND AND MARCH
15:47:41 16 3RD?

15:47:41 17 A YES.

15:47:41 18 Q AND WHAT DID YOU TELL THE DEFENDANT?

15:47:43 19 A SOMETHING ABOUT WHEN THE TELEPHONE CALL
15:47:52 20 TRANSPIRED.

15:47:53 21 Q AND WHAT DID THE DEFENDANT SAY IN RESPONSE, IF
15:47:55 22 ANYTHING?

15:47:55 23 A I DON'T RECALL.

15:47:56 24 Q DID THE DEFENDANT -- DID THE DEFENDANT TALK TO
15:48:02 25 YOU ABOUT WHAT, IF ANYTHING ELSE, YOU AND HE SHOULD

DO ABOUT DR. GOOTNICK?

A I DON'T REMEMBER.

MS. WONG: AT THIS TIME THE GOVERNMENT
WOULD LIKE TO PLAY WHAT IS ALREADY IN EVIDENCE AS
GOVERNMENT'S EXHIBIT 13.

THE COURT: THIS IS AN AUDIOTAPE
RECORDING?

MS. WONG: YES.

THE COURT: AND AS I UNDERSTAND IT, THIS
IS A -- IT'S AN AUDIOTAPE, BUT IT'S NOT, THOSE OF
US OLD ENOUGH TO REMEMBER, A CASSETTE TAPE. THIS
IS NOT AN ACTUAL TAPE, IT'S A DIGITAL RECORDING.

MS. WONG: THAT'S CORRECT, YOUR HONOR.

THE COURT: ON A CD OR A DVD TYPE OF
DISK, IS IT?

MS. WONG: YES.

THE COURT: SO WE'LL HAVE SOMETHING ON
THE SCREEN.

MS. WONG: YES, YOUR HONOR.

THE COURT: WE'LL HEAR A VOICE FROM THE
SPEAKER BUT SOMETHING WILL APPEAR ON THE SCREEN.
IS THAT A TRANSCRIPT?

MS. WONG: THAT'S CORRECT, YOUR HONOR.

THE COURT: I SEE. AND PERHAPS I SHOULD
LET YOU STATE IF THERE IS ANY AGREEMENT BETWEEN

15:49:03 1 COUNSEL REGARDING THE TRANSCRIPT.

15:49:07 2 MS. WONG: YES, YOUR HONOR, THERE'S A
15:49:08 3 STIPULATION AS TO THE ACCURACY OF THE TRANSCRIPT
15:49:10 4 AND IT'S ALREADY BEEN -- THE TRANSCRIPT HAS ALREADY
15:49:13 5 BEEN ADMITTED PURSUANT TO THAT STIPULATION.

15:49:28 6 MY APOLOGIES, YOUR HONOR, THE TRANSCRIPT
15:49:30 7 HAS BEEN STIPULATED THAT IT IS ACCURATE. IT HAS
15:49:32 8 NOT YET BEEN ADMITTED.

15:49:33 9 THE COURT: ALL RIGHT. THANK YOU. SO,
15:49:35 10 LADIES AND GENTLEMEN, YOU'RE ABOUT TO HEAR A
15:49:36 11 RECORDING THAT HAS BEEN RECEIVED IN EVIDENCE BY
15:49:43 12 STIPULATION.

15:49:43 13 NOW, A TRANSCRIPT OF THIS RECORDING, AS
15:49:45 14 YOU WILL SEE, WILL APPEAR ON THE SCREEN.

15:49:49 15 THIS TRANSCRIPT IS BEING PROVIDED TO HELP
15:49:51 16 YOU IDENTIFY SPEAKERS AND TO HELP YOU DECIDE WHAT
15:49:54 17 THE SPEAKERS SAY.

15:49:56 18 REMEMBER, PLEASE, THAT THE RECORDING, THE
15:49:59 19 RECORDING IS THE EVIDENCE, NOT THE TRANSCRIPT.

15:50:03 20 IF YOU HEAR SOMETHING DIFFERENT FROM WHAT
15:50:05 21 APPEARS IN THE TRANSCRIPT, WHAT YOU HAVE HEARD IS
15:50:09 22 CONTROLLING.

15:50:10 23 NOW, IF I CAN ANALOGIZE THIS AS I DID
15:50:14 24 WITH COUNSEL A MOMENT AGO, WHAT I BELIEVE THIS --
15:50:17 25 WHAT YOU WILL SEE HERE IN JUST A MOMENT IS AKIN TO

15:50:23 1 THE SUPER SCRIPTS THAT THOSE THAT ARE OPERABLE
15:50:27 2 THAT'S WHAT YOU'LL SEE ON THE BOTTOM OF THE SCREEN.
15:50:30 3 SO THAT'S WHAT I BELIEVE WILL APPEAR AND THAT'S
15:50:32 4 WHAT I'M TOLD WILL APPEAR.

15:50:34 5 ARE YOU PREPARED TO PLAY THE TAPE?

15:50:36 6 MS. WONG: YES, YOUR HONOR.

15:50:37 7 THE COURT: EXCUSE ME. WE'LL PLAY THAT
15:50:39 8 NOW. WOULD YOU LIKE THE REPORTER TO REPORT THIS,
15:50:41 9 THE TRANSCRIPT, OR DOES COUNSEL AGREE THAT THE
15:50:44 10 REPORTER NEED NOT REPORT THE RECORDING?

15:50:47 11 MR. O'REILLY: I BELIEVE THE COUNSEL WILL
15:50:48 12 AGREE THAT THE REPORTER CANNOT TRANSCRIBE THIS
15:50:53 13 BECAUSE THE TRANSCRIPT HAS BEEN STIPULATED TO BY
15:50:56 14 THE PARTIES.

15:50:56 15 MR. FONG: SO STIPULATED, YOUR HONOR.

15:50:58 16 THE COURT: THANK YOU. AND THE RECORDING
15:51:00 17 IS ACTUALLY IN EVIDENCE. ALL RIGHT. THANK YOU.

15:51:02 18 SO YOU WILL NOT NEED TO REPORT THIS
15:51:03 19 MATTER.

15:51:04 20 YOU MAY PLAY THE TAPE.

15:51:06 21 MS. WONG: THANK YOU, YOUR HONOR. MAY WE
15:51:07 22 PLAY GOVERNMENT'S EXHIBIT.

15:51:15 23 (WHEREUPON, A DIGITAL RECORDING WAS
15:53:05 24 PLAYED IN OPEN COURT OFF THE RECORD.)

15:53:05 25 BY MS. WONG:

15:53:05 1 Q NOW, MR. FUNG, IS THAT A RECORDING OR THE
15:53:10 2 BEGINNING OF THE RECORDING THAT YOU HAD WITH
15:53:14 3 DR. GOOTNICK THAT DAY?

15:53:15 4 A YES.

15:53:15 5 Q NOW, I'D LIKE TO JUST ASK YOU ONE OR TWO
15:53:18 6 QUESTIONS BEFORE WE GO ON ABOUT WHAT WAS JUST SAID
15:53:20 7 THERE -- AND THAT WAS YOU ON THE RECORDING, RIGHT?

15:53:24 8 A YES.

15:53:25 9 Q AND WHEN YOU'RE MENTIONING ABOUT THE FRANCHISE
15:53:27 10 TAX BOARD CALLING THE DEFENDANT AND THAT IT DOESN'T
15:53:33 11 MAKE SENSE FOR DR. GOOTNICK TO SUE HIM, WHAT WERE
15:53:36 12 YOU TRYING TO GET DR. GOOTNICK TO DO?

15:53:39 13 A TO DROP THE LAWSUIT.

15:53:40 14 Q AND WHEN YOU MENTIONED THE FRANCHISE TAX
15:53:43 15 BOARD, HOW WERE YOU TRYING TO MAKE DR. GOOTNICK
15:53:46 16 FEEL?

15:53:47 17 A WORRIED.

15:53:52 18 Q AND WHO TOLD YOU, WHO, IF ANYONE, TOLD YOU TO
15:53:56 19 MENTION THE FRANCHISE TAX BOARD TO DR. GOOTNICK?

15:54:02 20 A THE DEFENDANT.

15:54:03 21 Q NOW, YOU ALSO SAID JUST RIGHT NOW IN THE
15:54:05 22 RECORDING, AND WHEN YOU GO TO JAIL I'M NOT ANY
15:54:08 23 BETTER AND THERE'S SOMETHING CALLED WILLFUL.

15:54:10 24 WHAT WERE YOU TRYING TO GET DR. GOOTNICK
15:54:12 25 TO DO WHEN YOU WERE TALKING TO HIM ABOUT

15:54:14 1 WILLFULNESS AND HIM GOING TO JAIL?

15:54:17 2 A THAT WAS WHEN THE DEFENDANT TRIED TO ACTUALLY
15:54:23 3 WANT ME TO REPEAT TO DR. GOOTNICK.

15:54:26 4 Q AND, NOW, WAS THAT SUPPOSED TO DO WITH YOUR --
15:54:30 5 WHEN YOU WERE SAYING THAT, DID THAT HAVE TO DO WITH
15:54:32 6 YOUR CRIMINAL CASE?

15:54:36 7 A I BELIEVE SO, YES.

15:54:41 8 Q BECAUSE YOU WERE TALKING TO HIM ABOUT HOW YOU
15:54:43 9 WOULDN'T BE ANY BETTER IF DR. GOOTNICK WENT TO
15:54:53 10 JAIL. DO YOU RECALL HEARING THAT?

15:54:54 11 A YES.

15:54:54 12 Q AND SO WHAT WERE YOU HOPING THAT DR. GOOTNICK
15:54:56 13 WOULD DO IN TERMS OF PROVING WHETHER OR NOT YOU
15:54:59 14 WERE WILLFULLY DOING SOMETHING IN YOUR CASE?

15:55:01 15 A AT THE TIME MY FRAME OF MIND IS CONFUSED AND
15:55:18 16 MY FRAME OF MIND AT THAT TIME WAS CONFUSED AND ALSO
15:55:23 17 TRYING TO LEARN REALLY FAST WHAT THE DEFENDANT IS
15:55:27 18 TRYING TO EDUCATE ME OR TEACH ME OR WHAT THAT WORD
15:55:31 19 "WILLFUL" MEANS.

15:55:31 20 Q AND WHAT WERE YOU HOPING, IF ANYTHING, THAT
15:55:35 21 DR. GOOTNICK WOULD DO FOR YOU IN YOUR CRIMINAL
15:55:38 22 CASE?

15:55:47 23 A HELP ME.

15:55:48 24 MS. WONG: LET'S CONTINUE WITH THE
15:55:49 25 RECORDING.

15:55:50 1 (WHEREUPON, A DIGITAL RECORDING WAS
15:57:24 2 PLAYED IN OPEN COURT OFF THE RECORD.)

15:57:24 3 MS. WONG: CAN YOU STOP IT.

15:57:27 4 Q NOW, DID YOU HEAR HOW YOU EXACTLY REPLIED ON
15:57:29 5 THE TAPE, MR. FUNG?

15:57:31 6 A YES.

15:57:31 7 Q AND WHEN DR. GOOTNICK WAS TALKING ABOUT WHAT
15:57:33 8 YOU SAID YESTERDAY. WAS HE REFERRING TO THE PHONE
15:57:38 9 CALL YOU MADE ON MARCH 2ND OF 2006 TO HIM?

15:57:41 10 A YES.

15:57:41 11 Q AND WAS THAT THE DEFENDANT -- WAS THAT THE
15:57:44 12 CALL THAT THE DEFENDANT WANTED YOU OR ASKED YOU TO
15:57:46 13 MAKE?

15:57:47 14 A YES.

15:57:48 15 MS. WONG: YOU CAN CONTINUE WITH THE
15:57:49 16 RECORDING.

15:59:29 17 (WHEREUPON, A DIGITAL RECORDING WAS
15:59:30 18 PLAYED IN OPEN COURT OFF THE RECORD.)

15:59:32 19 BY MS. WONG:

15:59:32 20 Q NOW, WHEN YOU TOLD DR. GOOTNICK THAT HE WOULD
15:59:35 21 BE IN DEEP DOO-DOO, WHAT WERE YOU REFERRING TO
15:59:37 22 THERE?

15:59:38 23 A RIGHT NOW JUST LOOKING AT THAT INFORMATION AND
15:59:42 24 THIS I REMEMBER THAT THE DEFENDANT SAID YOU HAVE
15:59:47 25 ALL OF GOOTNICK'S DOCUMENTS, FINANCIALS, AND

15:59:49 1 EVERYTHING.

15:59:50 2 Q AND WHAT DID THE DEFENDANT SAY THAT HE WAS
15:59:53 3 GOING TO DO WITH THE DOCUMENTS, IF ANYTHING?

15:59:56 4 A THAT HE WOULD NOT GIVE IT TO THE FRANCHISE TAX
16:00:10 5 BOARD, WOULD NOT PROVIDE IT TO THE FRANCHISE TAX
16:00:13 6 BOARD IF THE LAWSUIT IS BEING DROPPED.

16:00:15 7 Q AND WHAT IF DR. GOOTNICK REFUSED TO DROP THE
16:00:22 8 LAWSUIT? DID THE DEFENDANT SAY WHAT HE WOULD DO
16:00:24 9 THEN?

16:00:24 10 A I DON'T RECALL.

16:00:25 11 Q AND DID YOU -- WHY DID YOU KEEP MENTIONING THE
16:00:28 12 FRANCHISE TAX BOARD TO DR. GOOTNICK?

16:00:31 13 A BECAUSE THAT'S WHAT THE DEFENDANT TOLD ME THAT
16:00:35 14 HE HAD BEEN CONTACTED BY THE FRANCHISE TAX BOARD.

16:00:37 15 Q AND WHAT WERE YOU HOPING YOU WOULD ACCOMPLISH
16:00:41 16 BY CONTINUING TO MENTION THE FRANCHISE TAX BOARD?

16:00:44 17 A THAT GOOTNICK WOULD DROP THE LAWSUIT AGAINST
16:00:50 18 THE DEFENDANT.

16:00:50 19 Q AND IF DR. GOOTNICK DROPPED THE LAWSUIT, DID
16:00:53 20 YOU THINK THAT THAT WOULD HELP YOUR CRIMINAL CASE?

16:00:55 21 A NO.

16:01:00 22 MS. WONG: LET'S CONTINUE.

16:01:01 23 (WHEREUPON, A DIGITAL RECORDING WAS
16:04:41 24 PLAYED IN OPEN COURT OFF THE RECORD.)

16:04:41 25 BY MS. WONG:

16:04:42 1 Q NOW, MR. FUNG, WHEN DR. GOOTNICK ASKED IF
16:04:45 2 LIGHTER TOLD YOU TO CALL HIM, WHY DID YOU RESPOND
16:04:49 3 NO?

16:04:49 4 A THE DEFENDANT ASKED ME -- TOLD ME THAT DON'T
16:04:56 5 SAY THAT THE DEFENDANT ASKED ME TO CALL HIM.

16:04:59 6 Q SO IS IT FAIR TO SAY THAT IF DR. GOOTNICK
16:05:05 7 ASKED YOU WHETHER OR NOT THE DEFENDANT HAD GIVEN
16:05:08 8 YOU INSTRUCTIONS YOU WERE SUPPOSED TO DENY THAT?

16:05:10 9 A YES.

16:05:10 10 Q AND WHO TOLD YOU TO DENY IT?

16:05:13 11 A THE DEFENDANT.

16:05:14 12 Q LET'S CONTINUE WITH THE RECORDING.

16:05:17 13 (WHEREUPON, A DIGITAL RECORDING WAS
16:06:46 14 PLAYED IN OPEN COURT OFF THE RECORD.)

16:06:46 15 MS. WONG: COULD YOU STOP THE RECORDING
16:06:47 16 FOR JUST A MOMENT.

16:06:48 17 Q NOW, WHEN YOU SAID "AND HE IS VERY
16:06:54 18 CONVINCING," WHO ARE YOU REFERRING TO IN YOUR
16:06:56 19 CONVERSATION WITH DR. GOOTNICK?

16:06:57 20 A CAN YOU REPEAT THE QUESTION?

16:07:02 21 Q AND YOU SAID "AND HE IS VERY CONVINCING."

16:07:05 22 WHO ARE YOU REFERRING TO THERE IN THE
16:07:18 23 PHONE CALL WHEN YOU TOLD THAT TO DR. GOOTNICK, "I
16:07:20 24 DON'T KNOW, I DON'T KNOW. OKAY. AND HE'S VERY
16:07:23 25 CONVINCING."

16:07:37 1 MR. FUNG, I'LL ASK YOU ACTUALLY A
16:07:40 2 DIFFERENT QUESTION.

16:07:41 3 HERE YOU JUST HEARD THE PART OF THE
16:07:43 4 RECORDING WHERE YOU WERE TALKING TO DR. GOOTNICK
16:07:45 5 ABOUT WILLFUL AND NOT WILLFUL AND PUTTING STUFF
16:07:48 6 BEFORE THE GRAND JURIES AND SAID THAT "WE NEED TO
16:07:51 7 PUT THAT TO THE GRAND JURY."

16:07:53 8 WHEN YOU SAID "WE," WHO ARE YOU REFERRING
16:08:00 9 TO THERE?

16:08:01 10 A I'M TRYING TO UNDERSTAND. AT THE TIME, YOU
16:08:10 11 KNOW, MY FRAME OF THOUGHT WAS OBVIOUSLY I WAS
16:08:17 12 REALLY SCARED ABOUT BEING INDICTED AND THAT I WAS
16:08:25 13 TAUGHT BY THE DEFENDANT ABOUT THE GRAND JURY THING.

16:08:28 14 Q AND WERE YOU HOPING THAT DR. GOOTNICK COULD
16:08:31 15 HELP YOU WITH THE GRAND JURY?

16:08:32 16 A NO.

16:08:38 17 Q LET'S CONTINUE WITH THE AUDIO.

16:08:45 18 (WHEREUPON, A DIGITAL RECORDING WAS
16:17:22 19 PLAYED IN OPEN COURT OFF THE RECORD.)

16:17:22 20 MS. WONG: WOULD YOU PLEASE STOP IT.

16:17:25 21 Q MR. FUNG, HAD YOU DISCUSSED THE BANKRUPTCY
16:17:27 22 WITH THE DEFENDANT?

16:17:28 23 A THE DEFENDANT CALLED ME AND INFORMED ME.

16:17:32 24 Q AND SO YOU -- AND IS THAT HOW YOU FOUND OUT
16:17:35 25 ABOUT THE BANKRUPTCY?

16:17:36 1
16:17:36 2
16:17:45 3
16:17:48 4
16:17:48 5
16:17:52 6
16:17:55 7
16:17:56 8
16:17:58 9
16:18:00 10
16:18:01 11
16:18:08 12
16:18:08 13
16:18:14 14
16:18:17 15
16:18:20 16
16:18:23 17
16:18:25 18
16:18:26 19
16:18:32 20
16:18:33 21
16:18:34 22
16:25:02 23
16:25:02 24
16:25:02 25

A YES.

Q WHY DID YOU TELL DR. GOOTNICK THAT THAT'S NOT, THAT YOU FOUND OUT ABOUT THE BANKRUPTCY SOME OTHER WAY?

A I'M SORRY. COULD YOU REPEAT THE QUESTION.

Q BUT THAT'S NOT WHAT YOU TOLD DR. GOOTNICK JUST NOW ON THE RECORDING, IS IT?

A NO.

Q AND WHY DIDN'T YOU TELL HIM HOW YOU REALLY FOUND OUT ABOUT THE BANKRUPTCY?

A AT THAT TIME I WAS MAKING A FALSE STATEMENT, I GUESS.

Q AND BEFORE IN THIS RECORDING WE HAVE HEARD HOW YOU SAID SEVERAL TIMES THAT DR. GOOTNICK SHOULD CONSIDER BEING PEACEFUL OR BE PEACEFUL WITH THE DEFENDANT. WHAT WERE YOU TRYING TO GET DR. GOOTNICK TO DO WHEN YOU WERE MAKING THOSE STATEMENTS?

A TO RESOLVE THE LAWSUITS.

MS. WONG: YOU CAN CONTINUE WITH THE RECORDING.

(WHEREUPON, A DIGITAL RECORDING WAS PLAYED IN OPEN COURT OFF THE RECORD.)

BY MS. WONG:

Q NOW, MR. FUNG, NEAR THE END OF THAT

16:25:05 1 CONVERSATION YOU AND DR. GOOTNICK DISCUSSED CALLING
16:25:12 2 THE DEFENDANT. DO YOU RECALL THAT?

16:25:13 3 A YES.

16:25:14 4 Q AND DID YOU, IN FACT, CALL THE DEFENDANT AFTER
16:25:16 5 THAT PHONE CONVERSATION?

16:25:17 6 A YES.

16:25:18 7 Q AND AFTER YOU -- AND WHAT DID YOU SPEAK WITH
16:25:23 8 THE DEFENDANT ABOUT DURING THAT CONVERSATION?

16:25:24 9 A I TOLD HIM THAT I WOULD MAKE THE PHONE CALL AS
16:25:27 10 SOON AS HE WANTED ME TO AND PRETTY MUCH WHAT THE
16:25:32 11 WHOLE CONVERSATION WAS.

16:25:33 12 Q AND WHAT, IF ANYTHING, DID THE DEFENDANT SAY
16:25:35 13 TO YOU DURING THAT CONVERSATION?

16:25:38 14 A I DON'T RECALL.

16:25:41 15 Q DO YOU RECALL THAT YOU THEN CALLED
16:25:45 16 DR. GOOTNICK BACK AFTER TALKING TO THE DEFENDANT?

16:25:48 17 A I DON'T RECALL THAT.

16:25:51 18 MS. WONG: LET'S PLAY, START THIS SECOND
16:25:55 19 PART OF GOVERNMENT'S EXHIBIT 13.

16:26:08 20 (WHEREUPON, A DIGITAL RECORDING WAS
16:35:46 21 PLAYED IN OPEN COURT OFF THE RECORD.)

16:35:46 22 BY MS. WONG:

16:35:47 23 Q MR. FUNG, WHAT WAS THE LETTER THAT
16:35:49 24 DR. GOOTNICK WAS REFERRING TO IN THAT CONVERSATION?
16:35:53 25 DID YOU WRITE THAT LETTER?

16:35:54 1 A I BELIEVE THAT THAT'S SOME MOTIONS THAT I
16:36:02 2 FILED THAT THE DEFENDANT PREPARED FOR ME TO TRY TO
16:36:06 3 SAVE ME.

16:36:08 4 MS. WONG: AT THIS TIME, YOUR HONOR, THE
16:36:09 5 GOVERNMENT IS AT A STOPPING POINT. WE DO HAVE ONE
16:36:12 6 MORE RECORDING.

16:36:12 7 THE COURT: ALL RIGHT. LET'S TAKE OUR --
16:36:15 8 HOW LONG IS THE RECORDING? DO YOU KNOW?

16:36:18 9 MS. WONG: THE SECOND RECORDING I THINK
16:36:20 10 IS ABOUT 20 OR 25 MINUTES.

16:36:23 11 THE COURT: I SEE. WELL, LET'S TAKE OUR
16:36:25 12 EVENING RECESS NOW THEN.

16:36:27 13 AND FOLKS, WE'LL RECONVENE AT 1:00
16:36:32 14 O'CLOCK, 1:00 O'CLOCK TOMORROW AFTERNOON AND SO IF
16:36:36 15 YOU COULD COLLECT YOURSELVES SO WE CAN BE IN AT
16:36:39 16 1:00 O'CLOCK, I APPRECIATE IT. WE'LL BE IN RECESS,
16:36:41 17 AND I REMIND YOU OF THE ADMONITION.

16:36:43 18 SIR, YOU CAN STAND DOWN AND I'LL SEE YOU
16:36:48 19 TOMORROW.

16:37:11 20 (WHEREUPON, THE EVENING RECESS WAS
16:37:12 21 TAKEN.)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

/s/

IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

DATED: DECEMBER 10, 2011